

IN THE CIRCUIT COURT FOR THE FIFTH JUDICIAL CIRCUIT  
EDGAR COUNTY, ILLINOIS

**FILED**

SEP 19 2016

*Sandra K. Willett*  
Circuit Clerk, 5th Judicial Circuit Edgar County

RIDES MASS TRANSIT DISTRICT, )

Plaintiff, )

vs. )

No: 2016-L-16 )

DONALD WISEMAN, EDGAR COUNTY )

TREASURER, in his official capacity, )

Defendant. )

**DEFENDANT'S MOTION TO DISMISS**

NOW COMES the Defendant, DONALD WISEMAN, in his official capacity as Edgar County Treasurer, by Giffin, Winning, Cohen & Bodewes, P.C., through Edgar County State's Attorney Mark Isaf, as Special Prosecutor, and for his Section 2-619.1 Motion to Dismiss, respectfully states as follows:

1. Defendant brings this Motion pursuant to 735 ILCS 5/2-619.1, which provides that "Motions with respect to pleadings under Section 2-615, motions for involuntary dismissal or other relief under Section 2-619, and motions for summary judgment under Section 2-1005 may be filed together as a single motion in any combination."

2. Pursuant to Section 2-619 of the Code of Civil Procedure, a "Defendant may, within the time for pleading, file a motion for dismissal of the action" because "the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619.

3. A motion to dismiss pursuant to Section 2-615 may assert, among other things, "that a pleading or portion thereof be stricken because substantially insufficient in law" or for failing include necessary parties. In relevant part, the Code of Civil Procedure provides:

All objections to pleadings shall be raised by motion. The motion shall point out specifically the defects complained of, and shall ask for appropriate relief, such as: that a pleading or portion thereof be stricken because substantially insufficient in law, or that the action be dismissed,\* \* \* that necessary parties be added, or that designated misjoined parties be dismissed, and so forth.

735 ILCS 5/2-615(a).

**COUNT 1 – BREACH OF CONTRACT – SECTION 2-615**

4. The Edgar County Resolution, Exhibit B to Plaintiff’s Complaint (hereinafter “Edgar Resolution”), is presumed not to be a contract, and Plaintiff has failed to allege the Edgar County resolution constituted an enforceable contract based upon an offer and acceptance and supported by consideration.

5. Only the Edgar County Board could order the Treasurer to remit payment of funds from the county treasury that the Treasurer has received and is responsible for keeping safe. However, Plaintiff fails to both join Edgar County, the sole party authorized to initiate the payment Plaintiff seeks, and also to allege that such an order of the Edgar County Board was ever made upon the Treasurer. Further, Plaintiff fails to allege or attach any documents showing that the sole named defendant, Treasurer Wiseman, entered into a contract with any other party.

6. For the reasons stated herein and in Defendant’s Memorandum in Support of this Motion, filed contemporaneously with this Motion, Count I of Plaintiff’s Complaint must be dismissed.

**COUNT I – BREACH OF CONTRACT – SECTION 2-619(a)(9)**

7. The Edgar Resolution was adopted without express statutory authority, is void *ab initio*, and will not support a claim for breach of contract.

8. In addition to being void, the transfer of funds sought by Plaintiff, in the absence of statutory authority, is in violation of Dillon’s Rule, tantamount to an impermissible grant or

donation of funds not authorized by law, and would amount to a breach of the trust in which a unit of government holds property for the benefits of its inhabitants.

9. For the reasons stated herein and in Defendant's Memorandum in Support of this Motion, filed contemporaneously with this Motion, Count I of Plaintiff's Complaint must be dismissed.

**COUNT II – MANDAMUS - SECTION 2-615**

10. Plaintiff's Complaint fails to state a claim for mandamus in that Count II merely relies on the void Edgar County resolution and/or the impermissible gift discussed above, neither of which illegal activities will support a claim for mandamus.

11. On the face of Plaintiff's complaint, it is clear Plaintiff negligently and unreasonably delayed more than twenty-two (22) months in commencing the above-entitled action, prejudicing Defendant in that two budget cycles of Edgar County have passed wherein the county funds have been, to varying degrees, appropriated, dissipated, distributed, transferred, and/ or put to other lawful uses such that laches must bar Count II of Plaintiff's complaint.

12. For the reasons stated herein and in Defendant's Memorandum in Support of this Motion, filed contemporaneously with this Motion, Count II of Plaintiff's Complaint must be dismissed.

**WHEREFORE**, Defendant prays this Court enter an Order:

- A. Dismissing Plaintiff's Complaint with prejudice; and
- B. For any and all such further and equitable relief that the Court deems just.

Respectfully Submitted,

**DONALD WISEMAN, in his official capacity as  
EDGAR COUNTY TREASURER, Defendant**

By:   
\_\_\_\_\_  
One of His Attorneys

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**PROOF OF SERVICE**

Service of the foregoing document was made by mailing a copy thereof, in a sealed envelope, postage fully prepaid, addressed to:

Patrick Hunn  
Law Office of Robert C. Wilson  
PO Box 544  
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and by depositing same in the United States Mail from the office of the undersigned on this 15<sup>th</sup> day of September, 2016.



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IN THE CIRCUIT COURT FOR THE FIFTH JUDICIAL CIRCUIT  
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*Sandra K. Willett*  
Circuit Clerk, 5th Judicial Circuit Edgar County

RIDES MASS TRANSIT DISTRICT, )  
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Plaintiff, )  
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vs. )  
)  
DONALD WISEMAN, EDGAR COUNTY )  
TREASURER, in his official capacity, )  
)  
Defendants. )

No: 2016-L-16

**DEFENDANT’S MEMORANDUM OF LAW  
IN SUPPORT OF HIS MOTION TO DISMISS**

NOW COMES the Defendant, DONALD WISEMAN, in his official capacity as Edgar County Treasurer, by Giffin, Winning, Cohen & Bodewes, P.C., through Edgar County State’s Attorney Mark Isaf, as Special Prosecutor, and in support of his Section 2-619.1 Motion to Dismiss respectfully states as follows:

**BACKGROUND**

On August 8, 2016, Plaintiff Rides Mass Transit District filed a two-count Complaint against Defendant Donald Wiseman, the Edgar County Treasurer, in his official capacity. Count I asserts a breach of contract and alleges the following.

Prior to July 1, 2013, the East Central Illinois Mass Transit District (“ECIMTD”) provided services to Edgar and Clark Counties. On or about April 18, 2013, ECIMTD approved an ordinance or resolution wherein ECIMTD determined that it should terminate its existence and services so that Edgar and Clark Counties Could join a contiguous mass transit district (“Ordinance 0413”). Ordinance 0413 specified that ECIMTD would be dissolved effective June 30, 2013.

On June 17, 2013, the Edgar County Board of Commissioners adopted a resolution which stated that Edgar County would be annexed into the Rides Mass Transit District on July 1, 2013 (“Edgar Resolution”). The Edgar Resolution also stated that all assets received by Defendant upon dissolution of the ECIMTD shall be transferred, assigned and conveyed by Defendant to the Rides Mass Transit District as Edgar County’s contribution to the Rides Mass Transit District. In response to this resolution, the Rides Mass Transit District adopted a resolution on June 20, 2013 approving the annexation of Edgar County into its district (“Resolution 153”).

On or about July 28, 2014, a cashier’s check for \$150,775.97, which represented proceeds from the liquidation of the ECIMTD, was sent to Defendant. On October 6, 2014, a cashier’s check in the amount of \$1,374.52 was sent to Defendant as final payment for the liquidation of the ECIMTD’s assets.

In reliance on the money to be transferred to the Rides Mass Transit District from the liquidation of ECIMTD, the Rides Mass Transit District purchased property in Paris, Illinois at the cost of approximately \$635,000 to provide mass transit services to Edgar County. Defendant has not remitted the \$152,150.49 in liquidated assets of the ECIMTD to the Rides Mass Transit District as provided in the Edgar Resolution. While not explicitly alleged, it appears that Plaintiff would have this court infer through Plaintiff’s limited allegations that the Edgar Resolution somehow created contractual rights for Plaintiff. According to Plaintiff, Defendant has breached this alleged contract.

Count II incorporates all of the above allegations and requests a Writ of Mandamus ordering Defendant to pay \$152,150.49 to Rides Mass Transit District. Additionally, Count II cites Ordinance 0413 provision that states “[a]ny assets of the ECIMTD remaining after payment of its bills shall be distributed by assignment to the . . . Treasurer of Edgar County.”

(Emphasis added by Plaintiff). Count II also cites the provision of the Edgar Resolution stating that the funds were assigned to Defendant by ECIMTD as Edgar County's contribution to the Rides Mass Transit District.

### ANALYSIS

Defendant bring this Motion pursuant to 735 ILCS 5/2-619.1, which provides that “[m]otions with respect to pleadings under Section 2-615, motions for involuntary dismissal or other relief under Section 2-619, and motions for summary judgment under Section 2-1005 may be filed together as a single motion in any combination.”

A 2-615 motion to dismiss may assert, among other things, “that a pleading or portion thereof be stricken because substantially insufficient in law,” a necessary party was not joined, or a incorrect party was misjoined. 735 ILCS 5/2-615(a). In considering a 2-615 motion to dismiss, “all well-pleaded facts, as well as the reasonable inferences which may be drawn from those facts, are taken as true.” McClellan v. Banc Midwest, N.A., 164 Ill. App. 3d 304, 307 (4th Dist. 1987). “However, a plaintiff cannot rely simply on conclusions of law or fact unsupported by specific factual allegations.” Sherman v. Ryan, 392 Ill. App. 3d 712, 721 (1 Dist. 2009).

A 2-615 motion to dismiss attacks the legal sufficiency, not the factual sufficiency, of a complaint. See Albright v. Seyfarth et al., 176 Ill. App. 3d 921, 926 (1 Dist. 1988). In light of a 2-615 motion to dismiss, “a reviewing court must determine whether the allegations of the complaint, when interpreted in the light most favorable to the plaintiff, are sufficient to establish a cause of action upon which relief may be granted.” Connick v. Suzuki Motor Co., 174 Ill. 2d 482, 490 (1996).

Whereas, A 2-619 motion for involuntary dismissal admits the legal sufficiency of the plaintiff's claim and asserts an affirmative matter outside the four corners of the pleading that



defeats the claim. 735 ILCS 5/2-619(a)(9); Czarobski v. Lata, 227 Ill. 2d 364, 369 (2008). In considering a 2-619 motion, the court “must construe the pleadings and supporting documents in the light most favorable to the nonmoving party.” Czarobski, 227 Ill. 2d at 369. In response to a 2-619(a)(9) motion, “[t]he plaintiff must establish that the defense is unfounded or requires the resolution of an essential element of material fact before it is proven.” 735 ILCS 5/2-619(c); Kedzie & 103rd Currency Exch. v. Hodge, 156 Ill. 2d 112, 116 (1993).

### **COUNT I – BREACH OF CONTRACT**

#### **A. PLAINTIFF HAS FAILED TO ALLEGE AN ENFORCEABLE CONTRACT BETWEEN EITHER THE TREASURER OR THE COUNTY AND PLAINTIFF.**

The **Edgar Resolution is not an enforceable contract**, nor does Plaintiff allege that it is. What is more, Plaintiff’s Complaint is completely lacking of any allegation that Treasurer Wiseman, the solitary named defendant, was a party to this alleged contract or even involved in its formation.

“When determining whether an ordinance or statute creates a contract, it is well settled: [T]he presumption is that a law is not intended to create private contractual or vested rights but merely declares a policy to be pursued until the legislature shall ordain otherwise. A party who asserts that a State law creates contractual rights has the burden of overcoming the presumption that a contract does not arise out of a legislative enactment.” Chicago Limousine Serv., Inc. v. City of Chicago, 335 Ill. App. 3d 489, 495 (1st Dist. 2002) (internal citations and punctuation omitted). “Further, “[i]n determining whether a statute was intended to create a contractual relationship between the State and affected party, the court must examine the language of the statute.” Chicago Limousine Serv., Inc. v. City of Chicago, 335 Ill. App. 3d 489, 495 (1st Dist. 2002) citing Fumarolo v. Chicago Board of Education, 142 Ill.2d 54, 104 (1990). In making its examination, “It is well established that a contract forms when there has been an offer,

acceptance of that offer, and consideration.” Chicago Limousine Serv., Inc. v. City of Chicago, 335 Ill. App. 3d 489, 495 (1st Dist. 2002).

The Edgar Resolution passed by Edgar County does provide for a transfer of assets received by Edgar County Treasurer to Rides Mass Transit District as a “contribution” to Rides Mass Transit District. However, Plaintiff also relies upon Resolution 153 (Exhibit C to Plaintiff’s Complaint) as the basis for its claim. Resolution 153 “[authorizes] the annexing of contiguous counties into the Rides Mass Transit District,” but makes no mention of the transfer of assets. Rather, when examined together, the Edgar Resolution and Resolution 153 fail to reflect any bargained-for-exchanged involving the transfer of assets. The only corresponding terms in both the Edgar Resolution and Resolution 153 are those that direct Plaintiff to pursue grants and operating assistance.

Even assuming *arguendo* the Edgar Resolution constituted an offer to transfer the assets, Plaintiff’s Complaint contains no allegation of acceptance of that offer by Plaintiff nor does any acceptance appear in any of the documents on which Plaintiff bases its claims. Furthermore, Plaintiff’s complaint is devoid of allegation of consideration for the transfer of assets. In fact, the only use of the word “consideration” in Plaintiff’s Complaint was in reference to the exchange of resolutions in Paragraph 6 of the same. Therefore, the Edgar Resolution, alone or in conjunction with Resolution 153, does not form an enforceable contract.

Furthermore, Treasurer Wiseman is not identified as making or accepting any offers or receiving any consideration for the same. Even if some contractual relationship is found to exist, there are no allegations in Plaintiff’s Complaint that support the notion that Treasurer Wiseman is a party to that contractual relationship. Consequently, Treasurer Wiseman has been improperly joined as a party to this action, and as a misjoined party must be dismissed.

For the reasons stated herein, Count I of Plaintiff's Complaint must be dismissed pursuant to Section 2-615 for failure to state a claim.

**B. PLAINTIFF FAILED TO JOIN THE COUNTY AS A NECESSARY PARTY**

"The powers of the county as a body corporate or politic, shall be exercised by a county board." 55 ILCS 5/5-1004. Moreover, "[e]ach county shall have power: \*\*\*3. To make all contracts and do all other acts in relation to the property and concerns of the county necessary to the exercise of its corporate powers." 55 ILCS 5/5-1005. However, a county treasurer, pursuant to Section 3-10005 of the Counties Code, "shall receive and safely keep the revenues and other public moneys of the county, and all money and funds authorized by law to be paid to him, and disburse the same pursuant to law." 55 ILCS 5/3-10005. In doing so, the treasurer must take care that "[n]o money or funds shall be paid out of any county treasury, except in accordance with an order of the county board, or when payment is specially authorized by law to be made." 55 ILCS 5/3-10014. Accordingly, only the Edgar County Board could order the Treasurer to remit payment of funds from the county treasury that the Treasurer has received and is responsible for keeping safe. Nevertheless, Plaintiff fails to both join Edgar County, the sole party authorized to initiate the payment Plaintiff seeks, and also to allege that such an order of the Edgar County Board was ever made upon the Treasurer.

For the reasons stated herein, Count I of Plaintiff's Complaint must be stricken and dismissed for Plaintiff's failure to join Edgar County as a necessary party pursuant to 735 ILCS 5/2-615.

C. **EDGAR COUNTY RESOLUTION DATED JUNE 17, 2013 IS VOID PURSUANT TO DILLON'S RULE AND CANNOT FORM THE BASIS FOR A BREACH OF CONTRACT.**

The Edgar Resolution adopted by the Edgar County Board was unsupported by any statutory grant of authority. “[An] ordinance adopted without express statutory authority is void.” *Vill. of River Forest v. Midwest Bank & Trust Co.*, 12 Ill. App. 3d 136, 139 (1st Dist. 1973). Edgar County is a non-home-rule unit of local government pursuant to Sections 1 and 7 of the 1970 Constitution of the State of Illinois. Ill. Const. art. VII, § 1, 7. As a non-home-rule unit of local government, Edgar County is governed by Dillon’s Rule. *Vill. of Sugar Grove v. Rich*, 347 Ill. App. 3d 689, 694 (2d Dist. 2004) (“non-home-rule units of local government are governed by Dillon’s Rule”). Further, “...a non-home-rule unit, has only those powers granted to it by law, and certain powers enumerated in article VII, section 7, of the Illinois Constitution.” *Pesticide Pub. Policy Found. v. Vill. of Wauconda*, 117 Ill. 2d 107, 111 (1987).

Section 9 of the Local Mass Transit District Act provides that “[t]he funds remaining after the payment of all debts and settlement of all obligations and claims shall be paid over on a pro rata basis based on area as follows: (1) to the Treasurer of each municipality that was in whole or in part within the boundary of the District; and (2) to the Treasurer of each county in which any unincorporated area of the county was within the boundary of the District.” 70 ILCS 3610/9. Accordingly, the law requires that the proceeds from the liquidation of ECIMTD’s assets after dissolution be paid to the Treasurer. This was done here. However, there is no authority in the Local Mass Transit District Act, the Counties Code, or the Illinois Constitution that authorizes those proceeds to be paid to another mass transit district after the discontinuance of a mass transit district.

Neither Plaintiff nor the Edgar Resolution cite to any other grant of authority to undertake the transfer contemplated in the resolution and sought in Plaintiff's Complaint. Consequently, the Resolution at Exhibit B, which requires Treasurer Wiseman to transfer, assign, and convey "all assets received by Edgar County Treasurer... to Rides Mass Transit District as the County's contribution to Rides Mass Transit District," and which forms the basis of Plaintiff's complaint, is void because it was adopted without express statutory authority and is therefore in violation of Dillon's Rule.

In spite of the lack of authority and the mandate of Dillon's Rule that a non-home-rule unit of local government only undertake that which it is expressly authorized to do by the constitution or statute, Plaintiff seeks to have this Court aid it recovery of funds that would have otherwise illegally obtained. The Illinois Supreme Court has refused this position and held that "[t]he general rule of law is that a contract made in violation of a statute is void, and that, when a plaintiff cannot establish his cause of action without relying upon an illegal contract, he cannot recover." *Ellison v. Adams Exp. Co.*, 245 Ill. 410, 416 (1910).

For the reasons stated herein, Count I of Plaintiff's Complaint must be dismissed pursuant to 735 ILCS 5/2-619 because it is based upon a void resolution of Edgar County.

**D. THE TRANSFER FROM EDGAR COUNTY TO RIDES MASS TRANSIT DISTRICT CONSTITUTES AN IMPERMISSIBLE GIFT.**

In addition to being void because it would violate Dillon's Rule, the transfer of funds sought by Plaintiff, in the absence of statutory authority, is tantamount to an impermissible gift. A county "holds property in trust for the benefit of the inhabitants of the county," so "a grant or donation of county funds to an organization... is not authorized by law." See 1974 Ill. Atty. Gen. Op. S-839. See also *Vine St. Clinic v. HealthLink, Inc.*, 222 Ill. 2d 276, 283 (2006) ("Well-reasoned opinions of the Attorney General interpreting or construing an Illinois statute are

persuasive authority and are entitled to considerable weight in resolving a question of first impression, although they do not have the force and effect of law.”).

Where a unit of government proposes to donate a portion of its revenue that it receives pursuant to statute to another unit of government to assist the latter, the former does so without authority and any agreement to that end is invalid. See 1978 Ill. Atty. Gen. Op. S-1389 (opining “that the [unit of local government] does not have the authority to enter into the proposed agreement and that, as a result, such an agreement is invalid.”). Further, the Illinois Supreme Court has held that:

[a unit of local government] is bound to administer such property faithfully, honestly and justly, and if it is guilty of a breach of trust by disposing of its valuable property, without any, or for a nominal, consideration, it will be regarded in the same light as if it were the representative of a private individual, or of a private corporation; that the mere fact in such a case, that the forms of legislation are used in committing such breach of trust, will make no difference in the character of the act.

Sherlock v. Village of Winnetka, 59 Ill. 389, 398–99 (1871). Therefore, the transfer of funds to Plaintiff contemplated in the Edgar Resolution and sought in Plaintiff’s Complaint would be nothing more than an impermissible gift.

For the reasons stated herein, Count I of Plaintiff’s Complaint must be dismissed with prejudice pursuant to 735 ILCS 5/2-619 because it constitutes an impermissible gift.

## **COUNT II – MANDAMUS**

### **A. PLAINTIFF HAS FAILED TO STATE A CLAIM FOR MANDAMUS.**

“Mandamus is an extraordinary remedy traditionally used to compel a public official to perform a ministerial duty.” People ex rel. Madigan v. Snyder, 208 Ill.2d 457, 464 (2004). A petition for mandamus will be granted “only if a plaintiff establishes a clear, affirmative right to relief, a clear duty of the public official to act, and a clear authority in the public official to

comply with the writ.” Hadley v. Montes, 379 Ill.App.3d 405, 407 (4th Dist. 2008) (quotation omitted). “A plaintiff must set forth every material fact necessary to show he or she is entitled to a writ of mandamus, and the plaintiff bears the burden to establish a clear, legal right to it.” Lucas v. Taylor, 349 Ill. App. 3d 995, 998 (4th Dist. 2004).

Here, Plaintiff cannot allege or show that it can establish any of the above factors. As discussed above, Plaintiff cannot establish there is a contract between it and Defendant (or Edgar County for that matter). More damaging to its claim for mandamus, Defendant does not have a duty to act. First, Plaintiff has not even alleged that Defendant has been presented with an order to pay by the County Board and then refused to pay. Moreover, neither Defendant nor Edgar County have authority to transfer or give these funds to Plaintiff. See Redmond v. Novak, 86 Ill. 2d 374, 382–83 (1981) (holding that “counties are likewise under no duty to perform acts not specifically authorized by statute or necessarily arising by implication from a statute.”). As stated, non-home rule counties only have the authority given to them by statute. The statute governing dissolving mass transit districts requires that the money go to Edgar County after the liquidation of the ECIMTD’s assets. 70 ILCS 3610/9 (“The funds remaining after the payment of all debts and settlement of all obligations and claims shall be paid over on a pro rata basis based on area as follows: \*\*\* (2) to the Treasurer of each county in which any unincorporated area of the county was within the boundary of the District”). Additionally, the statute governing annexation into mass transit districts does not provide authority to give the money to Plaintiff. 70 ILCS 3610/3.01. Because no statutory authority for Edgar County to give the money from the liquidation of the ECIMTD to Plaintiff, it is illegal to do so. Moreover, as discussed above, it is illegal for a county to gift the money it holds in trust for its inhabitants. The Illinois Supreme Court has long held that “a writ of mandamus will not be ordered, directing the performance of

an act which the respondents have no authority or duty to perform and which would be illegal. People ex rel. Yarrow v. Lueders, 287 Ill. 107, 115 (1919); see also Hill v. Butler, 107 Ill. App. 3d 721, 727 (4th Dist. 1982) (stating that mandamus will not issue for the performance of an illegal act).

For the reasons stated herein, Count II of Plaintiff's Complaint must be dismissed pursuant to Section 2-615 for failure to state a claim.

**B. PLAINTIFF'S CLAIM FOR MANDAMUS IS BARRED BY LACHES**

The doctrine of *laches* applies to petitions for mandamus. Ashley v. Pierson, 339 Ill. App. 3d 733, 739 (4th Dist. 2003). "The doctrine of *laches* is grounded on the principle that courts are reluctant to come to the aid of a party who knowingly slept on rights to the detriment of the other party." Monson v. Cty. of Grundy, 394 Ill. App. 3d 1091, 1094 (3rd Dist. 2009). To establish the doctrine of *laches* applies, the party seeking its application must generally prove two elements: (1) the petitioner lacked due diligence in bringing his or her claim; and (2) the party asserting laches was thereby prejudiced. Ashley, 339 Ill. App. 3d at 739.

"[T]he plaintiff's lack of due diligence is established by a showing that more than six months elapsed between the accrual of the cause of action and the filing of the petition, unless the plaintiff provides a reasonable excuse for the delay." Ashley, 339 Ill. App. 3d at 739. See also Monson v. Cty. of Grundy, 394 Ill. App. 3d 1091, 1094, (3<sup>rd</sup> Dist. 2009) (The general rule is that a delay of six months or longer is per se unreasonable). Plaintiff's lack of diligence is easily established in this case. Plaintiff claims that the checks from the liquidation of the ECIMTD were received by Treasurer Wiseman in July and October 2014 and that money was supposed to be turned over to Plaintiff after Treasurer Wiseman's receipt of said money. Yet, Plaintiff failed



to file its suit until August 2016, no less than twenty-two (22) months after Treasurer Wiseman is alleged to have received the second check from the liquidation of the ECIMTD.

“As to the prejudice prong, although a party asserting *laches* generally must prove that he was prejudiced by the other party’s delay, in cases where a detriment or inconvenience to the public will result, prejudice is inherent.” Ashley, 339 Ill. App. 3d at 739 (quotation omitted). Here, if Plaintiff were successful on its claim and Treasurer Wiseman were required to turn over the more than \$150,000 of Edgar County’s money to Plaintiff, Edgar County’s budget would be significantly impacted. As discussed above, almost two full fiscal years (the 2014 and 2015 budget years) have ended since the alleged cause of action accrued and before Plaintiff filed this suit. Therefore, forcing the County to pay this amount of money to Plaintiff now would be highly prejudicial because these funds Plaintiff seeks are part of Edgar County’s budget history. See Monson v. Cty., 394 Ill. App. 3d at 1095 (stating “[t]o require defendant to pay VACGC’s claims after its budget was exhausted and after fiscal year 2006 came to a close would be ‘highly prejudicial.’”); see also PACE, Suburban Bus Div. of Reg’l Transp. Auth. v. Reg’l Transp. Auth., 346 Ill. App. 3d 125, 144 (2nd Dist. 2003) (stating that “[l]aches does apply, however, to Pace’s request for a monetary award representing subsidies that Pace alleges it should have received in the years 1996 through 2001. When Pace filed its complaint, these budget years had concluded, and, presumably, the funds at issue were no longer available. It would be highly prejudicial to require the RTA to pay these ‘back subsidies’ long after these funds have become a part of the RTA’s budget history. Therefore, we conclude that Pace may not recover ‘back subsidies’ for the years 1996 through 2001.”).

For the reasons stated herein, Count II of Plaintiff’s Complaint must be dismissed pursuant to Section 2-615 as it is barred by laches.

**WHEREFORE**, Defendant prays this Court enter an Order:

- A. Dismissing Plaintiff's Complaint with prejudice; and
- B. For any and all such further and equitable relief that the Court deems just.

Respectfully Submitted,

**DONALD WISEMAN, in his official capacity as  
EDGAR COUNTY TREASURER, Defendant**

By:  \_\_\_\_\_  
One of His Attorneys

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**PROOF OF SERVICE**

Service of the foregoing document was made by mailing a copy thereof, in a sealed envelope, postage fully prepaid, addressed to:

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Harrisburg, IL 62946

and by depositing same in the United States Mail from the office of the undersigned on this 15<sup>th</sup> day of September, 2016.



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