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

RIDES MASS TRANSIT DISTRICT, Plaintiff, vs. DONALD WISEMAN, EDGAR COUNTY TREASURER, in his official capacity, and the EDGAR COUNTY BOARD Defendants.	)))))))))))	No: 2016-L-16 FILED MAR 15 2017 Angela R Barrett Circuit Clerk, 5th Judicial Circuit Edgar County

DEFENDANTS' MEMORANDUM OF LAW
IN SUPPORT OF THEIR MOTION TO DISMISS

NOW COME the Defendants, DONALD WISEMAN, in his official capacity as Edgar County Treasurer, and the EDGAR COUNTY BOARD, by Giffin, Winning, Cohen & Bodewes, P.C., through Edgar County State's Attorney Mark Isaf, as Special Prosecutor, and in support of their Section 2-619.1 Motion to Dismiss Plaintiff's First Amended Complaint respectfully state as follows:

BACKGROUND

On August 8, 2016, Plaintiff Rides Mass Transit District ("Rides") filed a two-count Complaint against Defendant Donald Wiseman, the Edgar County Treasurer, in his official capacity. Count I asserted a breach of contract and alleged that a resolution passed by Edgar County and a separate resolution passed by Rides created a contractual relationship that Defendant Donald Wiseman breached by failing to pay $152,150.49 to Rides. Count II incorporated all of the above allegations and requested a Writ of Mandamus ordering Defendant Wiseman to pay $152,150.49 to Rides Mass Transit District.

Defendant Wiseman filed his Motion to Dismiss on September 19, 2016. At the hearing on Defendant's Motion to Dismiss on January 11, 2017, this Court dismissed both counts of Plaintiff's Complaint ruling that "both counts of the complaint must be stricken for failing to state a claim for breach of contract or mandamus." Transcript of January 11, 2017 Hearing, p.21-22. A copy of the relevant transcript pages is attached hereto as EXHIBIT A and incorporated by reference. With respect to Count I, this Court held that "the county's resolution was not an offer. The plaintiff's resolution was not an acceptance of an offer, and based on those circumstances, there is an inadequate showing of consideration." EXHIBIT A, p. 21. The Court dismissed Plaintiff's mandamus count "[b]ecause the plaintiff has not established a clear affirmative right under breach of contract or otherwise to the requested relief a writ of mandamus." EXHIBIT A, p.22-23. Plaintiff was given leave to amend its Complaint

On February 9, 2017, Plaintiff filed its two-count First Amended Complaint alleging promissory estoppel (Count I) and breach of unilateral contract (Count II). Each Count names Wiseman and the County Board as Defendants.

Count I of Plaintiff's First Amended Complaint 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"). A copy of Ordinance 0413 is attached hereto as EXHIBIT B and incorporated by reference. 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"). A copy of the Edgar Resolution is attached hereto as EXHIBIT C and incorporated by reference. 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 Rides as Edgar County's contribution to the Rides Mass Transit District. The Edgar Resolution was to have an effective date when the resolution was approved by a two-thirds (2/3) vote of the Rides Mass Transit District Board. Subsequently, Rides adopted a distinct and separate resolution on June 20, 2013 approving the annexation of Edgar County into its district ("Resolution 153"). A copy of Resolution 153 is attached hereto as EXHIBIT D and incorporated by reference. Thereafter, on June 30, 2013, ECIMTD ceased providing public transportation services, and Rides began providing public transportation services in Edgar County on July 1, 2013.

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 Wiseman. On October 6, 2014, a cashier's check in the amount of $1,374.52 was sent to Defendant Wiseman as final payment for the liquidation of the ECIMTD's assets.

Plaintiff further alleges that 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.

Count II, under the heading of "Breach of Unilateral Contract", restates the allegations in Count I in substantially the same form and order but with some distinctions. Most notably, Plaintiff alleges in Count II that in order to induce Rides to annex Edgar County in Rides'

district, on June 17, 2013 the Edgar Resolution was passed and approved by the Edgar County Board, and that act was the offer of a unilateral contract. Count II also alleges that Rides accepted Edgar County's offer to contract when Rides approved Resolution 153 by two-thirds vote on June 20, 2013, and at that time, Edgar County became bound by the Edgar Resolution's terms. As consideration in support of this contract, Plaintiff states that Rides began providing mass transportation services to Edgar County residents on July 1, 2013. Further, Plaintiff alleges that as the Defendant Edgar County Board's consideration in entering into the contract and receiving from Rides the transportation services, the funds received on July 8, 2014 and October 6, 2014 by the Treasurer of Edgar County should have been transferred to Rides.

In both Counts, Plaintiff seeks judgment against the Defendants in the amount of $152,150.49.

ANALYSIS

Defendants 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 an 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).

BASES FOR DISMISSAL COMMON TO COUNTS I & II

A. PLAINTIFF'S FIRST AMENDED COMPLAINT FAILS TO COMPLY WITH SECTION 2-603(b) OF THE CODE OF CIVIL PROCEDURE

Plaintiff has failed to comply with Section 2-603(b) of the Code of Civil Procedure. That section states as follows:

> Each separate cause of action upon which a separate recovery might be had shall be stated in a separate count or counterclaim, as the case may be and each count, counterclaim, defense or reply, shall be separately pleaded, designated and numbered, and each shall be divided into paragraphs numbered consecutively, each paragraph containing, as nearly as may be, a separate allegation.

735 ILCS 5/2-603(b). Here, both Counts I and II include two causes of action—one against Defendant Wiseman and one against the Defendant County Board. This is improper pursuant to

Section 2-603(b) and, therefore, these Counts must be dismissed. Clearly, a cause of action against a separate, duly-elected official is separate and distinct from a cause of action against a body politic.

B. PLAINTIFF FAILS TO ALLEGE THAT THE TREASURER MADE ANY PROMISES OR HAD ANY ROLE IN THE ALLEGED UNILATERAL CONTRACT (SECTION 2-615)

Section 2-615 of the Code of Civil Procedure allows a court to dismiss improper parties. See 735 ILCS 5/2-615(a) ("designated misjoined parties be dismissed"). Plaintiff fails to allege in Count I of its First Amended Complaint that Defendant Wiseman made any promises to Plaintiff, and similarly, Count II is lacking of any allegation that Defendant Wiseman had any role in the formation of the alleged unilateral contract.

Count I is based upon promissory estoppel and seeks a judgment against the Defendants jointly and severally in the amount of $152,150.49. "To establish a claim based on promissory estoppel, the plaintiff must allege and prove that (1) defendant made an unambiguous promise to plaintiff, (2) plaintiff relied on such promise, (3) plaintiff's reliance was expected and foreseeable by defendant, and (4) plaintiff relied on the promise to its detriment." Matthews v. Chicago Transit Auth., 2016 IL 117638, ¶ 95. Despite seeking to hold both Defendants jointly and severally liable in Count I, Plaintiff only mentions Defendant Wiseman, as Treasurer, in passing and most often in relation to the directive contained in the Edgar Resolution "that all assets received by Edgar County Treasurer upon the dissolution of the [ECIMTD] shall be transferred, assigned and conveyed by the County Treasurer to [RIDES]…." There are no allegations that the Treasurer promised, said, or did anything to fall within the claims of promissory estoppel or unilateral contract. Moreover, a county treasurer cannot bind his or her respective county, only a county board may do so. See 55 ILCS 5/5-1004 ("The powers of the county as a body corporate

or politic, shall be exercised by a county board."); see also 55 ILCS 5/5-1005 ("Each county shall have power: ***3. To make all contracts and do all other acts in relation to the property and concerns of the count necessary to the exercise of its corporate powers.") For the reasons stated herein, Counts I and II of Plaintiff's First Amended Complaint must be dismissed against Defendant Wiseman pursuant to 735 ILCS 5/2-615 because they fail to state a claim against him.

C. EDGAR COUNTY RESOLUTION DATED JUNE 17, 2013 IS VOID *AB INITIO* AND CANNOT FORM THE BASIS FOR RELIEF (SECTION 2-619)

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). When examining statutes, "[a] court may not add provisions that are not found in a statute, nor may it depart from a statute's plain language by reading into the law exceptions, limitations, or conditions that the legislature did not express." Schultz v. Illinois Farmers Ins. Co., 237 Ill. 2d 391, 408 (2010)

The Local Mass Transit District Act regulates the discontinuance process, *i.e.*, winding down. At the time the resolutions were drafted, Section 9 of the Local Mass Transit District Act provided that:

> Whenever the Board of Trustees of any District shall determine that there is no longer a public need for its transportation services or that other adequate services are or can be made available, and that it should terminate its existence and services, it may by resolution so certify to the participating municipalities and counties which created it. If the participating municipalities and counties approve of such discontinuance, they may by ordinance or resolution, as the case may be, authorize the District to discontinue its services and wind up its affairs. A copy of such ordinance or resolution or both, shall be filed with the county or municipal clerk or clerks and the Secretary of State. After payment of all its debts and settlement of all obligations and claims, any funds remaining after the sale and disposition of its property shall be disposed of by payment to the treasurer of the county or municipality which created it, or if created by 2 or more municipalities or counties, by payment to the several treasurers, first, to repay in whole or pro rata, funds advanced to the authority, and the balance, if any, pro rata according to the length of scheduled transportation route miles operated in the several municipalities and unincorporated areas of the several counties during the preceding calendar year.

70 ILCS 3610/9 (Formerly Ill.Rev.Stat.1991, ch. 111 $^{2}/_{3}$, ¶ 359.Laws 1959, p. 1635, § 9, eff. July 21, 1959.). This statutory provision does not authorize the transfer of proceeds from the discontinuance of a local mass transit district to any other entity; nor does Plaintiff allege that it does. Section 9 was complied with when the money from the sale and disposition of the ECIMTD's property was paid by the ECIMTD to the relevant treasurers, including the Edgar County Treasurer. 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. Therefore, when Edgar County passed its resolution dated June 17, 2013 (Exhibit C) authorizing the discontinuance of the district and transferring proceeds from the discontinuance of ECIMTD to RMTD, it "authorized" the transfer without express statutory 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). See also Vill. of Lisle v. Vill. of Woodridge, 192 Ill. App. 3d 568, 576 (2d Dist. 1989) ("a contract entered into by a municipality which lacks the authority to

do so is *ultra vires* and void."). Accordingly, the Edgar County Resolution dated June 17, 2013 is void.

The Amended Complaint alleges[1] that Section 2-17(b) (30 ILCS 740/2-17(b)) of the Downstate Public Transportation Act provides the authority for the county to transfer, assign, or convey its funds to Rides. Plaintiff concocted this *post hoc* rationalization in response to Defendant Wiseman's initial motion to dismiss, which alleged there was no authority to gift Edgar County funds to Rides. It is clear the Downstate Public Transportation Act was not a consideration when the resolutions cited by the Amended Complaint were passed. The Downstate Public Transportation Act is not mentioned in any of the ordinances or resolutions which Plaintiff claims relied upon the Act's authority. The plain and unambiguous language of Section 17-2 shows that the statute is not applicable in this case and does not provide the authority Plaintiff alleges it does. Section 17-2(b) states as follows:

> (b) Any county may apply for, accept and expend grants, loans or other funds from the State of Illinois or any department or agency thereof, from any unit of local government, from the federal government or any department or agency thereof, or from any other person or entity, **for use in connection with any public transportation provided pursuant to this Section**.

30 ILCS 740/2-17(b) (emphasis added).

Initially, Defendants note that, in the Amended Complaint and the affidavit attached thereto, there are no allegations that the funds Plaintiff seeks consist of those that Edgar County applied for, accepted, and expended by way of any grants, loans or other funds from the State of Illinois, a department or agency thereof, or from any other person. Rather, the funds are from the liquidation of assets. Defendants did not apply for or accept these funds. Instead, the funds came to the County by operation of law.

[1] The Amended Complaint cites 30 ILCS 740/2-15(b) however the quoted language in the Amended Complaint is from Section 2-17(b).

Also fatal to Plaintiff's claim is that Section 17(b) only applies if the funds are used "**in connection with any public transportation provided pursuant to this Section**." Subsection (a), the only other subsection to "this Section", provides "County authorization to provide public transportation and to apply for grants in connection therewith" and states that "[a]ny county or counties may, by ordinance, operate or otherwise provide for public transportation within such county or counties." 30 ILCS 740/2-17(a). Section 2-17(a) further provides that "[i]n order to so provide for such public transportation, any county or counties may enter into agreements with any individual, corporation or other person or private or public entity to operate or otherwise assist in the provision of such public transportation services." 30 ILCS 740/2-17(a). If such an agreement is executed "for the operation of such public transportation, the operator shall file 3 copies of such agreement certified by the clerk of the county executing the same with the Illinois Commerce Commission. Thereafter the Illinois Commerce Commission shall enter an order directing compliance by the operator with the provisions of Sections 55a and 55b of 'An Act concerning public utilities', approved June 28, 1921, as amended." 30 ILCS 740/2-17(a). Plaintiff has failed to attach any agreement entered into pursuant to Section 2-17(a) and filed with the Illinois Commerce Commission ("ICC"). In fact, Plaintiff has failed to even allege the existence of such an agreement or compliance with Section 2-17(a)'s requirement of filing with the ICC. What is more, Defendant Wiseman identified this defect in his Reply in Support of Motion to Dismiss Plaintiff's original Complaint. Yet, Plaintiff has still failed to allege and attach documents exhibiting compliance pursuant to this Section 2-17. Without any allegation that the conditions precedent that exist within Section 2-17(a) have been satisfied, Plaintiff cannot point to Section 2-17(b) in isolation as authority for the alleged contract.

Consequently, the Edgar Resolution that provides for the transfer of "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 Amended 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 its recovery of funds that would have been 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, Counts I and II of Plaintiff's First Amended Complaint must be dismissed pursuant to 735 ILCS 5/2-619 because it is based upon a void resolution of Edgar County.

D. IN THE ABSENCE OF STATUTORY AUTHORITY, THE TRANSFER FROM EDGAR COUNTY TO RIDES MASS TRANSIT DISTRICT CONSTITUTES AN IMPERMISSIBLE GIFT (SECTION 2-619)

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 funds 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 [to share sales tax revenue between the city and county] 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 Amended Complaint would be nothing more than an impermissible gift.

Plaintiff has previously argued that because none of the "seed money" for ECIMTD was provided by Edgar County and the funds received by Edgar County would continue to be used for the same mass transit purpose, that the transfer does not constitute a gift. That the seed money allegedly did not come from Edgar County is irrelevant. Section 9 of the Local Mass Transit District Act directs those funds to be paid to the county treasurer making them lawful property of the county. Though units of local government may be authorized to contract with one another by the constitution and statutory provisions related to intergovernmental cooperation, where one unit is not obligated to provide the other unit with anything as

consideration for the proposed agreement, that unit is donating to the other unit. Such an agreement is invalid. See 1978 Ill. Atty. Gen. Op. S-1389 (1978) (Illinois Attorney General opined that an agreement between a city and a county was invalid where "neither the [City's] intergovernmental cooperation powers nor its home rule powers authorize it to donate a portion of its [revenue] to the county as proposed in the agreement.").

Moreover, "Any * * * county may be annexed to a District * * * formed pursuant to Section 3 when the District has no tax levy in effect and has no bonded indebtedness if a petition for annexation is adopted by an ordinance or resolution approved by a majority vote of the * * * county board of such county and such ordinance or resolution is approved by a 2/3 vote of the members of the board of trustees of the District" (70 ILCS 3610/3.01). The statute does not require any sort of contribution or "seed money" by a county to effectuate such an annexation. Likewise, annexation into the Rides, by statute, does not require a contribution on the part of the party being annexed. Since the contribution is not required by statute and is neither required nor mentioned in Rides' June 20, 2013 Resolution 152, it is nothing more than a gift. Such a contract or promise would be invalid and unenforceable.

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

E. LACK OF A PRIOR APPROPRIATION DEFEATS ANY OBLIGATION OF FUNDS ON BEHALF OF A COUNTY

The Counties Code mandates that "no contract shall be entered into and no obligation or expense shall be incurred by or on behalf of a county unless an appropriation therefor has been **previously made.**" 55 ILCS 5/6-1005. "An appropriation involves the setting apart from public revenue a certain sum of money for a specific object." Illinois Mun. Ret. Fund v. City of Barry, 52 Ill. App. 3d 644, 646 (4th Dist. 1977). Counties are required to adopt an annual budget (55

ILCS 5/6-1001), which "shall contain: * * * (e) A schedule of proposed appropriations itemized as provided for proposed expenditures included in the schedule prepared in accordance with the provisions of paragraph (d) hereof, as approved by the county board or the board of county commissioners. Said schedule, when adopted in the manner set forth herein, shall be known as the annual appropriation ordinance." 55 ILCS 5/6-1002. "After the adoption of the county budget, no further appropriations shall be made" except in very limited circumstances, all of which require action by the county board. 55 ILCS 5/6-1003. Supplemental budgets are not allowed, with the exception of circumstances not present here. 55 ILCS 5/6-1004. Additionally, "[n]either the county board nor any one on its behalf shall have power, either directly or indirectly, to make any contract or do any act which adds to the county expenditures or liabilities in any year anything above the amount provided for in the annual budget for that fiscal year. Finally, "[a]ny person who violates, or who neglects or fails to comply with, the terms of this Division commits a Class B misdemeanor. 55 ILCS 5/6-1008.

Assuming *arguendo* that there was an enforceable contract or promise to pay pursuant to the Downstate Public Transportation Act as Plaintiff asserts, the contracts would be void due to there being no prior appropriation. As discussed above, counties are required to budget money for contracts and to appropriate said amounts before entering into contracts. "Neither the county board nor any one on its behalf shall have power, either directly or indirectly, to make any contract or do any act which adds to the county expenditures or liabilities in any year anything above the amount provided for in the annual budget for that fiscal year. * * * Except as herein provided, no contract shall be entered into and no obligation or expense shall be incurred by or on behalf of a county unless an appropriation therefor has been previously made." 55 ILCS 5/6-1005. Where a county board contracts or adds to the county expenditures without the necessary

prior appropriation, those acts are void. See 55 ILCS 5/6-24008 (stating that any contract, verbal or written, made in violation of the prior appropriation rule "shall be null and void as to said county, and no moneys belonging to that county shall be paid thereon"). These requirements are similar to the requirements for budgeting and appropriation that are imposed by statute on other public bodies, including municipalities[2], townships[3], and school boards[4]. Collectively, Defendants will refer to these statutes which require an appropriation be made by the appropriate authorities prior to entering a contract as the "Voiding Statutes."

With the exception of section 8-1-7 of the Illinois Municipal Code (65 ILCS 5/8-1-7), there are not many reported cases involving governments contracting without prior appropriation. "Section 8–1–7 has been consistently construed to render null and void any contract made by a city without a full prior appropriation by the city council." Nielsen-Massey Vanillas, Inc. v. City of Waukegan, 276 Ill. App. 3d 146, 152–53 (2nd Dist. 1995) (citing cases).

Edgar County made no such appropriation in its annual budget and/or appropriation ordinance for fiscal year 2013, which cover the relevant time period when the resolutions of Edgar County (dated June 17, 2013) and RMTD (dated June 20, 2013) were adopted. See Edgar County Appropriation Ordinance attached and incorporated herein as EXHIBIT E. See 735 ILCS 5/8-1001 (stating "[e]very court of original jurisdiction * * * shall take judicial notice of * * * [a]ll ordinances of every county within the State"). In the absence of a prior appropriation

[2] "no contract shall be made by the corporate authorities * * * unless an appropriation has been previously made concerning that contract or expense. Any contract made, or any expense otherwise incurred, in violation of the provisions of this section shall be null and void as to the municipality, and no money belonging thereto shall be paid on account thereof" 65 ILCS 5/8-1-7(a).

[3] Townships are required to comply with the Illinois Municipal Budget Law. 60 ILCS 1/80-60.

[4] "No contract shall be made or expense or liability incurred by the board * * * unless an appropriation therefor has been previously made. Neither the board, nor any member or committee, officer, head of any department or bureau, or employee thereof shall during a fiscal year expend or contract to be expended any money, or incur any liability, or enter into any contract which by its terms involves the expenditure of money for any of the purposes for which provision is made in the budget, in excess of the amounts appropriated in the budget. Any contract, verbal or written, made in violation of this Section is void as to the board, and no moneys belonging thereto shall be paid thereon." 105 ILCS 5/34-49.

and consistent with the Voiding Statutes identified above, even if the resolutions would have otherwise constituted a valid and enforceable promise or contract, which they do not, the contract or promise would fail for lack of a prior appropriation. For the reasons stated herein, Plaintiff's First Amended Complaint must be dismissed with prejudice pursuant to 735 ILCS 5/2-619 because of the lack of a prior appropriation.

BASES OF DISMISSAL SPECIFIC TO COUNT I – PROMISSORY ESTOPPEL

A. SECTION 2-615 – PLAINTIFF HAS FAILED TO ALLEGE FACTS SUFFICIENT TO SUPPORT A CLAIM FOR PROMISSORY ESTOPPEL

Count I is based upon promissory estoppel. "To establish a claim based on promissory estoppel, the plaintiff must allege and prove that (1) defendant made an unambiguous promise to plaintiff, (2) plaintiff relied on such promise, (3) plaintiff's reliance was expected and foreseeable by defendant, and (4) plaintiff relied on the promise to its detriment." Matthews v. Chicago Transit Auth., 2016 IL 117638, ¶ 95. "Plaintiff's reliance must be reasonable and justifiable." Quake Const., Inc. v. Am. Airlines, Inc., 141 Ill. 2d 281, 310 (1990). The elements of estoppel "must be supplemented here with the additional restriction that a public body will be estopped only when that is necessary to prevent fraud or injustice, and that is especially true when public revenues are involved." Rockford Life Ins. Co. v. Dep't of Revenue, 112 Ill. 2d 174, 185–86 (1986) (internal citations omitted). Finally, "[un]der Illinois law, a promissory estoppel claim will succeed where the other elements of a contract exist (offer, acceptance, and mutual assent), but consideration is lacking." Matthews, 2016 IL 117638, ¶ 93.

Plaintiff's claim of promissory estoppel is deficient in several respects. First, estoppel claims can only succeed where all of the elements of a contract exist other than consideration (see Matthews, 2016 IL 117638, ¶ 93). Here, as the Court previously concluded in its January 11, 2017 ruling, the resolutions do not form the basis of either an offer or acceptance. Because

these elements of contract do not exist, Plaintiff cannot state a claim for promissory estoppel. See Matthews, 2016 IL 117638, ¶ 93 (stating that a claim for promissory estoppel requires that the elements of offer, acceptance, and mutual assent exist, but consideration is lacking).

Second, Plaintiff has not alleged that Defendants made an unambiguous promise to Plaintiff. Rather, Plaintiff initially recites the portion of the Edgar Resolution that provided "that all assets received by Edgar County Treasurer upon the dissolution of the [ECIMTD] shall be transferred, assigned and conveyed by the County Treasurer to [RIDES] as the County's contribution to [RIDES]," which is tantamount to a statement of policy. However, "[t]he presumption is that laws do not create private contractual or vested rights, but merely declare a policy to be pursued until the legislature ordains otherwise." Unterschuetz v. City of Chicago, 346 Ill. App. 3d 65, 71 (1st Dist. 2004).

B. PROMISSORY ESTOPPEL IS BARRED BY LACHES

The doctrine of *laches* applies to petitions for promissory estoppel. 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, (3rd 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 Defendant 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 that Edgar County was required to turn over the more than $150,000 of its 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 that "[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."). Similarly, Edgar County has gone through several budget years since Plaintiff's alleged claims would have first accrued and, therefore, Plaintiff should not be able to recover any of the funds sought.

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

BASES OF DISMISSAL SPECIFIC TO COUNT II – UNILATERAL CONTRACT

A. PLAINTIFF HAS FAILED TO ALLEGE FACTS SUFFICIENT TO SUPPORT A CLAIM FOR AN ENFORCEABLE CONTRACT

The Edgar Resolution does not form the basis of an enforceable contract, nor does Plaintiff allege that it is. "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).

Plaintiff asserts that a unilateral contract was formed between Rides and at least one of the Defendants. Specifically, in paragraph 7 of its First Amended Complaint, Plaintiff alleges that "[i]n order to induce Rides to annex Edgar County into Rides' district, on June 17, 2013 the Edgar County Board resolution was passed and approved by the Edgar County Board * * *. This was the offer of a unilateral contract." In paragraph 9, Plaintiff alleges:

> By Rides approving Resolution 153 by two-thirds vote * * *, the resolution of Edgar County became effective on June 20, 2013 and Edgar County became bound by its terms, part of which included the direction to the Treasurer of Edgar County "that all assets received by Edgar County Treasurer upon the dissolution of [ECIMTD] shall be transferred, assigned and conveyed by the County Treasurer to [Rides] as the County's contribution to [Rides] * * *. Rides accepted Edgar County's offer to contract.

Based upon these allegations, Plaintiff's position is clearly that the Edgar Resolution and Resolution 153 form the offer and acceptance, respectively, of the alleged contract.

These allegations fail to establish a claim for the formation of a unilateral contract for several reasons. First, Plaintiff has merely alleged legal conclusions which are insufficient to support a cause of action. Second, this Court has previously held that the resolutions in question do not constitute an offer and acceptance of that offer. Third, even assuming *arguendo* that the Edgar Resolution was an offer, it was not an offer that invited acceptance by rendering performance. Finally, even if the Edgar Resolution were an offer that invited acceptance by performance, Plaintiff failed to allege that the acceptance was in accordance with the terms of the offer. Each of these defects will be addressed in turn below.

1. Plaintiff impermissibly relies on legal conclusions for the basis of a unilateral contract.

Illinois is a fact-pleading jurisdiction. A plaintiff must allege facts, not mere conclusions, to establish his or her claim as a viable cause of action. Napleton v. Village of Hinsdale, 229 Ill.2d 296, 305, 891 N.E.2d 839, 845 (2008). Plaintiff's allegations that "[the Edgar Resolution]

was the offer of a unilateral contract" and "Rides accepted Edgar County's offer to contract" are nothing more than legal conclusions that the elements of offer and acceptance of a contract have been satisfied. However, "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). Furthermore, these legal conclusions are directly contrary to this Court's ruling at the January 11, 2017 hearing on Defendant's original Motion to Dismiss wherein this Court held "[t]he county's resolution was not an offer," and "[t]he Plaintiff's resolution was not an acceptance of an offer." EXHIBIT A, p. 21.

2. The Edgar Resolution did not constitute an offer that invited acceptance by rendering performance.

A unilateral contract is a contract wherein "an **offer invites** an offeree to accept by rendering a performance and does not invite a promissory acceptance," and is "created when the offeree tenders or begins the invited performance or tenders a beginning of it." Restatement (Second) of Contracts §45 (1981) (emphasis added). "An offer can be accepted by the rendering of a performance **only if the offer invites such an acceptance**." Restatement (Second) of Contracts §53 (1981) (emphasis added). The Edgar Resolution does not contain an invitation to accept by performance. Moreover, Plaintiff does not allege that the Edgar Resolution contained such an invitation to accept by performance. Instead, Plaintiff alleges that it was the passage and approval of the Edgar Resolution not the resolution itself that was the offer of unilateral contract.

3. Resolution 153 does not constitute acceptance by rendering of performance.

Even assuming arguendo that the Edgar Resolution constitutes an offer that invites acceptance by rendering performance, "[t]he offeror's duty of performance under any option contract so created is conditional on completion or tender of the invited performance **in accordance with the terms of the offer**." Restatement (Second) of Contracts §60 (1981)

(emphasis added). Additionally, "[i]f an offer prescribes the place, time or manner of acceptance its terms in this respect must be complied with in order to create a contract." Restatement (Second) of Contracts §60 (1981) (emphasis added). If the Edgar Resolution were to be considered an offer, its own terms provide that "[t]he resolution shall be effective when adopted by an official vote of the Edgar County Board and **have an effective date when such resolution and ordinance is approved by 2/3 vote of the Rides Mass Transit District Board.**" In other words, following approval by the Edgar County Board, the only manner of acceptance by the terms of the resolution would be for the Rides Mass Transit District Board to adopt the Edgar Resolution or one that is substantially the same. Instead, Plaintiff adopted a completely different Resolution that contained none of the provisions in the Edgar resolution and made no mention of the Edgar Resolution, the Edgar County Board, the Edgar County Treasurer, or the transfer of funds referenced in the Edgar Resolution. The only corresponding terms in both the Edgar Resolution and Resolution 153 are those that direct Plaintiff to pursue grants and operating assistance. "An acceptance requesting modification or containing terms which vary from those offered constitutes a rejection of the original offer, and becomes a counterproposal which must be accepted by the original offeror before a valid contract is formed." Zeller v. First Nat. Bank & Trust Co. of Evanston, 79 Ill. App. 3d 170, 172 (1st Dist. 1979) (citing Brook v. Oberlander, 49 Ill.App.2d 312 (1964); Johnson v. Whitney Metal Tool Co. (1950), 342 Ill. App. 258 (1950). Therefore, even if the Edgar Resolution were considered an offer, Plaintiff has failed to allege that it accepted the offer in accordance with the terms of the resolution or in the manner provided. Consequently, no valid contract could have been formed.

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

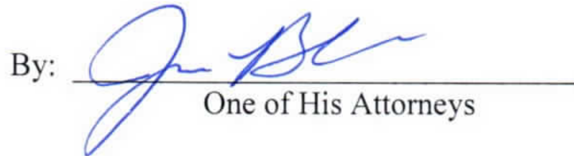
WHEREFORE, Defendant prays this Court enter an Order:

A. Dismissing Plaintiff's First Amended 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

Jason Brokaw, Reg. No. 6305541
Christopher Sherer, Reg. No. 6275910
Matthew R. Trapp, Reg. No. 6284154
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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
Harrisburg, IL 62946

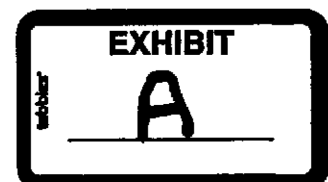
and by depositing same in the United States Mail from the office of the undersigned on this 13th day of March, 2017.

Jason Brokaw, Reg. No. 6305541
GIFFIN, WINNING, COHEN & BODEWES, P.C.
1 W. Old State Capitol Plaza
Myers Building, Suite 600
Springfield, IL 62701
Phone: (217) 525-1571
Fax: (217) 525-1710
jbrokaw@giffinwinning.com

9 SUCCESSOR MASS -- MASS TRANSIT DISTRICT. THERE DOES
10 HAVE TO BE A LEGITIMATE PURPOSE FOR EXERCISING THAT
11 AUTHORITY BUT I DO FIND THAT IT IS, AND IT'S BASED ON
12 THE AUTHORITY THAT'S BEEN SUBMITTED, THAT IT IS
13 WITHIN THE COUNTY'S POWERS TO DO SO. THIS COMPLAINT,
14 HOWEVER, DOESN'T DESCRIBE WHAT THE ACTUAL PURPOSE IS,
15 WHY THE COUNTY DID THAT, AND I'LL DISCUSS THE
16 RESOLUTIONS IN A MOMENT, BUT FOR A PROPER PURPOSE,
17 THAT CAN HAPPEN, AND IF IT IS DONE FOR THAT
18 LEGITIMATE PURPOSE, EXERCISING THAT AUTHORITY AS THE
19 COUNTY DID IS NOT TANTAMOUNT TO AN IMPERMISSIBLE
20 GIFT. THE COUNTY SIMPLY TOOK MONEYS INTENDED FOR USE
21 IN PROVIDING MASS TRANSIT SERVICES FOR ITS CITIZENS
22 AND DIRECTED THAT IT CONTINUE FOR SUCH USE.
23 THAT SAID, HOWEVER, IT'S THIS COURT'S
24 DETERMINATION TODAY THAT THE COUNTS -- BOTH COUNTS OF

21

1 THE COMPLAINT MUST BE STRICKEN FOR FAILING TO STATE A
2 CLAIM FOR BREACH OF CONTRACT OR MANDAMUS, SO FOR
3 THOSE REASONS, THE MOTION TO DISMISS PURSUANT TO
4 SECTION 2-615 IS ALLOWED. IN COUNT I, IT'S THIS
5 COURT'S VIEW THAT THE PLAINTIFF HAS -- THE PLAINTIFF
6 FAILS TO SUFFICIENTLY SET FORTH THE OFFER, THE
7 ACCEPTANCE, AND CONSIDERATION. IN THIS COURT'S VIEW,
8 THE COUNTY'S RESOLUTION WAS NOT AN OFFER. THE
9 PLAINTIFF'S RESOLUTION WAS NOT AN ACCEPTANCE OF AN
10 OFFER, AND BASED ON THOSE CIRCUMSTANCES, THERE IS AN
11 INADEQUATE SHOWING OF CONSIDERATION. ALSO THE
12 PLAINTIFF FAILS TO SUFFICIENTLY LINK THE ACTUAL
13 DEFENDANT IN THIS CASE, THE COUNTY TREASURER, TO ANY



14 SUCH CONTRACTURAL RELATIONSHIP. IF A CONTRACTURAL
15 RELATIONSHIP WAS IN FACT ESTABLISHED, IT WAS BETWEEN
16 THE PLAINTIFF AND THE COUNTY, NOT THE PLAINTIFF AND
17 THE COUNTY TREASURER. THE -- I WILL NOTE IN RESPONSE
18 TO ONE OF THE ARGUMENTS, HOWEVER, THAT THE COUNTY IN
19 THIS COURT'S VIEW DID AUTHORIZE AND DIRECT THE
20 DEFENDANT COUNTY TREASURER TO TRANSFER THOSE MONEYS.
21 BY VIRTUE OF THOSE RESOLUTION, THOSE MONEYS WERE
22 ACTUALLY RECEIVED. I DON'T FIND WHERE THEY
23 NECESSARILY NEEDED TO BE APPROPRIATED IN A BUDGET.
24 THEY WERE RECEIVED BY -- BY THE COUNTY FROM THE

1 DISSOLUTION OF THE EAST CENTRAL ILLINOIS MASS TRANSIT
2 DISTRICT. I REALIZE UNDER THE LAW THE MONEY GOES TO
3 THE COUNTY, BUT AS I INDICATED AND AS IS EVIDENT FROM
4 THE ARGUMENTS THE MONEY WAS RECEIVED FOR THE -- FOR
5 THE USE OF A MASS TRANSIT DISTRICT AND CAN BE TURNED
6 OVER FOR THAT CONTINUED USE, SO THAT THERE ISN'T A
7 STOPPAGE IN THOSE SERVICES, SO THAT WAS AUTHORIZED,
8 BUT THE NAMED DEFENDANT, THE COUNTY TREASURER, DID
9 NOT TRANSFER THOSE MONEYS AS DIRECTED, AND THE REASON
10 COULD BE BECAUSE THE LACK OF -- LACK OF A CONTRACT.
11 THIS COURT FINDS THAT MAYBE THE RESOLUTION DOESN'T
12 CREATE A CONTRACT, AND PERHAPS IF IT HAD BEEN DRAFTED
13 BY COUNSEL FOR THE PLAINTIFF, IT WOULD HAVE
14 ESTABLISHED THE -- THE NECESSARY CONSIDERATION, BUT
15 SOMETIMES THERE'S MEMORANDA OF UNDERSTANDINGS,
16 CERTAIN WRITTEN CONTRACTS OUTSIDE THE RESOLUTIONS
17 WHICH ACTUALLY PRESENT THE OFFER, PRESENT THE
18 ACCEPTANCE OF THE OFFER AND SHOWS THAT IT'S IN
19 CONSIDERATION FOR DOING CERTAIN THINGS, FORFEITING

20 CERTAIN THINGS, TURNING OVER CERTAIN THINGS, AND
21 PERFORMING SERVICES. THE COMPLAINT DOES NOT STATE
22 THAT THOSE THINGS WERE DONE.
23 BECAUSE THE PLAINTIFF HAS NOT ESTABLISHED A
24 CLEAR AFFIRMATIVE RIGHT UNDER BREACH OF CONTRACT OR

1 OTHERWISE TO THE REQUESTED RELIEF A WRIT OF MANDAMUS
2 WOULD ALSO NOT BE APPROPRIATE, SO FOR THOSE REASONS,
3 THE MOTION -- THE MOTION TO DISMISS IS ALLOWED
4 PURSUANT TO SECTION 2-615. BOTH COUNTS OF THE
5 COMPLAINT ARE STRICKEN AND I NEED TO ASK YOU THEN,
6 MR. HUNN, DO YOU WISH TO STAND ON THAT OR DO YOU WISH
7 TO SEEK LEAVE TO AMEND?
8 MR. HUNN: WE WOULD ASK LEAVE TO AMEND, YOUR
9 HONOR.
10 THE COURT: HOW MUCH TIME WOULD YOU NEED?
11 MR. HUNN: 21 DAYS.
12 THE COURT: ANY OBJECTIONS, MR. BROKAW?
13 MR. BROKAW: NO, YOUR HONOR.
14 THE COURT: HOW MUCH TIME AFTER THAT WOULD
15 YOU WANT TO FILE A RESPONSIVE PLEADING?
16 MR. BROKAW: I'M NOT QUITE AS FAMILIAR WITH
17 IT. I THINK MR. HUNN'S FIRM HAS BEEN INVOLVED FROM
18 THE BEGINNING. IF I COULD HAVE 30 DAYS TO RESPOND TO
19 THAT?
20 THE COURT: ANY OBJECTIONS, MR. HUNN?
21 MR. HUNN: NO OBJECTION, YOUR HONOR.
22 THE COURT: OKAY. WE WILL SHOW THEN THAT
23 THE MOTION TO DISMISS IS ALLOWED. BOTH COUNTS OF THE
24 COMPLAINT ARE STRICKEN. THE PLAINTIFF IS GIVEN

RESOLUTION 0413

ORDINANCE 0413

This Resolution and Ordinance authorizes the dissolution of the East Central Illinois Mass Transit District of Clark County and Edgar County, Illinois.

WHEREAS, Clark County, Illinois and Edgar County, Illinois formed the East Central Illinois Mass Transit District by Resolution and Ordinance of Incorporation herein attached as Exhibit I and II, and

WHEREAS, East Central Illinois Mass Transit District is no longer able to provide mass transit transportation services on a cost efficient basis in Clark County and Edgar County, and

WHEREAS, adequate services are or can be made available to Clark County or Edgar County by joining a larger Mass Transit District, and

WHEREAS, East Central Illinois Mass Transit District has determined that it should terminate its existence ad services in order to provide Clark County and Edgar County an opportunity to join a contiguous Mass Transit District.

NOW THEREFORE, be it ordained and resolved by the governing board of East Central Illinois Mass Transit District:

1. That adequate mass transit services are or can be made available to Clark County and Edgar County.
2. That the East Central Illinois Mass Transit District should terminate its existence and services.
3. That East Central Illinois Mass Transit District should certify to Clark County and Edgar County that it shall discontinue services on June 30, 2013 and wind up its affairs.
4. A copy of this Resolution and Ordinance shall be filed with the County Clerk of Clark County and the County Clerk of Edgar County and the Secretary of State of the State of Illinois.
5. Any assets of East Central Illinois Mass Transit District remaining after payment of its bills shall be distributed by assignment to the Treasurer of Clark County and Treasurer of Edgar County.
6. This Resolution and Ordinance is made pursuant to the provisions of 70 ILCS 3610/9.
7. That East Central Illinois Mass Transit District shall be dissolved effective June 30, 2013.

PRESENTED and ADOPTED this 18th day of April, 2013

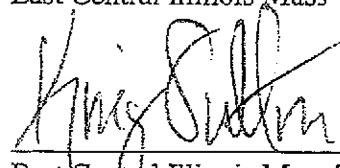
On the following vote:

AYES 5

NAYES 0

ABSENT 1

East Central Illinois Mass Transit District



East Central Illinois Mass Transit District
Board Chairman

Date: 04/18/13

ATTEST:

The undersigned Joan Mattingly being the duly elected Secretary of East Central Illinois Mass Transit District does herewith certify that the above Resolution and Ordinance was adopted the 18th day of April, 2013 by the Governing Board of East Central Illinois Mass Transit District.

Dated this 18th day of April, 2013.

Secretary of East Central Illinois Mass Transit District

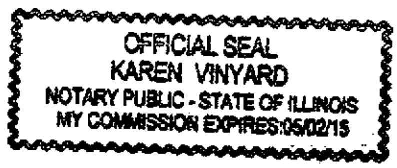
K:\MASS TRANSIT DISTRICT\EAST CENTRAL ILLINOIS MASS TRANSIT DISTRICT\RESOLUTION and ORDINANCE.docx

Certified Copy

I certify that the original of this Resolution is on file in the records of the office of East Central Illinois Mass Transit District.

IN WITNESS WHEREOF, I have hereunto affixed my official signature this 18th Day of June, 2013.

Karen Vinyard



15TH DAY
May, 2008
Rebecca R. Kraemer
COUNTY CLERK

EXHIBIT I

RESOLUTION AND ORDINANCE INCORPORATING

EAST CENTRAL ILLINOIS MASS TRANSIT DISTRICT

Be it ordained and resolved by the Board of Commissioners of the Counties of Edgar and Clark that East Central Illinois Mass Transit District be and hereby is incorporated as follows:

ARTICLE I. Name.

The name shall be East Central Illinois Mass Transit District.

ARTICLE II. Purpose.

The Mass Transit District shall have any and all authority conferred on Mass Transit Districts by the laws of the State of Illinois.

ARTICLE III. Board of Trustees.

A. The Board of Trustees of the East Central Illinois Mass Transit District shall be composed of:

Four Trustees to be appointed by the Chairperson of the Edgar County Board.

Two Trustees to be appointed by the Chairperson of the Clark County Board.

A Trustee will be appointed by the Chairperson of each County Board annexed into the district based on the county's federal and state funding appropriations for transportation services.

B. The term of appointment shall be four (4) years with the exception of the initial terms which shall be staggered as follows:

Appointment*	Initial Term
Edgar County 1st trustee	1years
Clark County 1st trustee	2years
Edgar County 2nd trustee	2 years
Clark County 2nd trustee	4 year
Edgar County 3rd trustee	3 years
Edgar County 4th trustee	4 years

C. Voting. Each Trustee shall be entitled to one vote on each matter submitted to the Board of Trustees.

D. Resignation. Any trustee may resign by filing a written resignation with Secretary of the East Central Illinois Mass Transit District whereupon the appointing authority will make another appointment to fill the unexpired term.

E. Manner of Acting. – The act of a majority of general members present at a meeting at which a quorum is present shall be the act of the membership.

F. Quorum. A quorum shall consist of 1 more than half of the appointed trustees.

G. Powers. The Board of Trustees may adopt such By-Laws and establish such rules and regulations and take such other actions as may be necessary to achieve the purpose for which the East Central Illinois Mass transit District is formed.

ARTICLE IV. Transfer of Title.

All property held by each County acquired by the Section 5311 2006, 2007 & 2008 Consolidated Vehicle Procurement Rolling Stock Capital Assistance Program included in the East Central Illinois Mass Transit District shall be transferred to the District on the date this ordinance is effective or at the end of the current grant period, whichever is later.

ARTICLE V. Effective Date.

This ordinance shall be effective when adopted by an official vote of the Edgar, and Clark County Boards and shall have an effective date which shall be the date the last of said County Boards adopt this ordinance.

* Appointees for Edgar County:

Kevin Trogdon - County Board Rep - 4 years
Joan Mattingly - Senior Center Rep - 2 years
King Sutton - Senior Center Rep - 3 years
Kirsten Harden - Transportation Coordinator for HRC Rep - 1 year

I move for the adoption of the foregoing Resolution AND EDGAR COUNTY APPOINTEES.

Jeff Poynter

I second the motion for the adoption of the foregoing Resolution AND Edgar County APPOINTEES.

Kevin Hogdon

PASSED this 14th day of May, 2008.

[signature]
CHAIRMAN OF THE BOARD

ATTEST:

Rebecca R Kraemer (SEAL)
EDGAR COUNTY CLERK

EXHIBIT II

RESOLUTION AND ORDINANCE INCORPORATING

EAST CENTRAL ILLINOIS MASS TRANSIT DISTRICT

Be it ordained and resolved by the Board of Commissioners of the Counties of Edgar and Clark that East Central Illinois Mass Transit District be and hereby is incorporated as follows:

ARTICLE I. Name.

The name shall be East Central Illinois Mass Transit District.

ARTICLE II. Purpose.

The Mass Transit District shall have any and all authority conferred on Mass Transit Districts by the laws of the State of Illinois.

ARTICLE III. Board of Trustees.

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Four Trustees to be appointed by the Chairperson of the Edgar County Board.

Two Trustees to be appointed by the Chairperson of the Clark County Board.

A Trustee will be appointed by the Chairperson of each County Board annexed into the district based on the county's federal and state funding appropriations for transportation services.

B. The term of appointment shall be four (4) years with the exception of the initial terms which shall be staggered as follows:

Appointment	Initial Term
Edgar County 1st trustee	1years
Clark County 1st trustee	2years
Edgar County 2nd trustee	2 years
Clark County 2nd trustee	4 year
Edgar County 3rd trustee	3 years
Edgar County 4th trustee	4 years

C. Voting. Each Trustee shall be entitled to one vote on each matter submitted to the Board of Trustees.

D. <u>Resignation.</u> Any trustee may resign by filing a written resignation with Secretary of the East Central Illinois Mass Transit District whereupon the appointing authority will make another appointment to fill the unexpired term.

E. <u>Manner of Acting.</u> – The act of a majority of general members present at a meeting at which a quorum is present shall be the act of the membership.

F. <u>Quorum.</u> A quorum shall consist of 1 more than half of the appointed trustees.

G. <u>Powers.</u> The Board of Trustees may adopt such By-Laws and establish such rules and regulations and take such other actions as may be necessary to achieve the purpose for which the East Central Illinois Mass transit District is formed.

<u>ARTICLE IV.</u> Transfer of Title.

All property held by each County acquired by the Section 5311 2006, 2007 & 2008 Consolidated Vehicle Procurement Rolling Stock Capital Assistance Program included in the East Central Illinois Mass Transit District shall be transferred to the District on the date this ordinance is effective or at the end of the current grant period, whichever is later.

<u>ARTICLE V.</u> Effective Date.

This ordinance shall be effective when adopted by an official vote of the Edgar, and Clark County Boards and shall have an effective date which shall be the date the last of said County Boards adopt this ordinance.

PASSED THIS 15th DAY OF May, 2008.

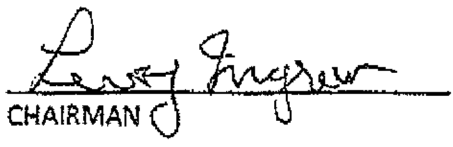
AYES: 7

NAYES: 0

ABSENT: 0

APPROVED THIS 15th DAY OF May, 2008.

ATTEST: CLARK COUNTY BOARD



CHAIRMAN

SECRETARY

04/17/2013 3:46 PM FAX 2174634507 ECIMID 0003/0006

RESOLUTION – EAST CENTRAL ILLINOIS MASS TRANSIT DISTRICT - RIDES MASS TRANSIT DISTRICT

Be it ordained and resolved by the Members of the Edgar County Board that East Central Illinois Mass Transit District is authorized to discontinue its services and wind up its affairs pursuant to ~~resolution by said District effective June 30th, 2013.~~

Be it ordained and resolved by the Members of the Edgar County Board that the County of Edgar be annexed into the Rides Mass Transit District on July 1st, 2013.

As a county member of the Rides Mass Transit District, Edgar County will have representation on the District Board according to the Local Mass Transit District Act (70 ILCS 3610) and the Rides Mass Transit District By-Laws, one Trustee to be appointed by the Chairperson of the County Board.

Further be it ordained and resolved that all assets received by Edgar County Treasurer upon the dissolution of the East Central Illinois Mass Transit District shall be transferred, assigned and conveyed by the County Treasurer to Rides Mass Transit District as the County's contribution to Rides Mass Transit District.

Further be it ordained and resolved that Rides Mass Transit District is herewith given immediate authority to apply for any and all Grants and Operating Assistance for public transportation services in the County for periods on and after July 1, 2013 the date of annexation of the County to Rides Mass Transit District.

The resolution shall be effective when adopted by an official vote of the Edgar County Board and have an effective date when such resolution and ordinance is approved by 2/3 vote of the Rides Mass Transit District Board.

On roll call vote this RESOLUTION NO. _________ was passed and approved this 07 day of June, 2013.

On the following vote:

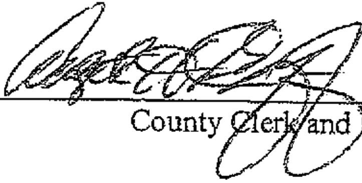
AYES 4 ABSTAIN 0

NAYES 0

EDGAR COUNTY BOARD OF COMMISSIONERS

Chairman

ATTEST:



County Clerk and Recorder

K:\MASS TRANSIT DISTRICT\EAST CENTRAL MASS TRANSIT DISTRICT\Resolution Edgar County.docx

RESOLUTION 153

Resolution authorizing the annexing of contiguous counties into the Rides Mass Transit District.

WHEREAS, the regionalism of public transit service is essential to the transportation of persons in the non-urbanized area; and

WHEREAS, the Downstate Operating Assistance Program makes funds available to help offset expenditures of eligible systems; and

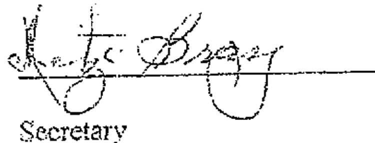
WHEREAS, grants for said funds will impose certain obligations upon the recipient, including the provision to provide local share necessary to cover costs not covered by the Downstate Operating Assistance Program and section 5311 of the Federal Transit Act of 1991.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE Rides Mass Transit District:

Section 1. That by a 2/3 vote of the Rides Mass Transit District Board the Edgar County be annexed into the District on July 1, 2013.

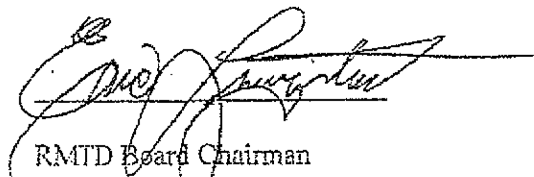
Ayes 9
Nays 0
Abstain 0

PRESENTED and ADOPTED this 20th day of June, 2013.



Secretary

Date: 6/20/13



RMTD Board Chairman

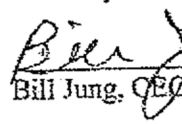
Date: Jun/20/2013

Certified Copy

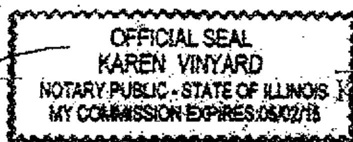
I certify that the original of this Resolution is on file in the records of the office Rides Mass Transit District in my custody.

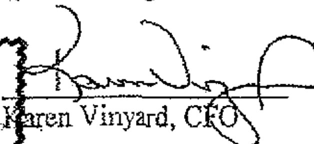
I do further certify that the foregoing Resolution remains in full force and effect and has not been rescinded, as amended or altered in any manner since the date of its adoption.

IN WITNESS WHEREOF, I have hereunto affixed my official signature this 20th Day of June 2013.



Bill Jung, CEO





Karen Vinyard, CFO