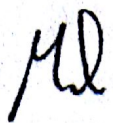


DATE: June 8, 2012  
TO: Jim Keller, Edgar County Board Chairman  
FROM: Mark R. Isaf, Edgar County State's Attorney   
RE: Special Service Area No. 1 Ambulance District (Edgar County Ambulance Service)

I was referred an inquiry from the County Board requesting that I investigate an allegation of an unpaid debt communicated to the County Board resulting from the 2003 sale of the Edgar County Ambulance to Dee and Lisa Burgin (hereinafter "Burgin"). The allegation is that the contract was not satisfied by Burgin resulting in a current debt of \$100,000.00 owed to the County. This inquiry is not a criminal investigation nor is it based upon the report of any law enforcement agency. Furthermore, this inquiry is not conducted to review, with the benefit of nine years hindsight, the decision of elected officials exercising their discretion on behalf of Edgar County in 2003.

I requested information from and/or interviewed the following individuals who are identified as having been directly involved in either the negotiation, sale and/or post-sale activity of the Ambulance Service: Dan Winans, then County Board Chairman, then County Board Members Monte Spillman, Ben Jenness, Verlin Funkhouser, Gene Barkely, Jim Keller and Kevin Trogdon, collectively party to the transaction as seller. Information was obtained from Dee Burgin, party to the sale transaction as purchaser, and Merle Clark, representing purchaser's financial institution. Don Wiseman, Edgar County Treasurer, helped me to piece together documentation supporting the financial transaction that is the target of this inquiry. The Honorable Matthew Sullivan, then State's Attorney for Edgar County, and the Honorable Steve Garst, then Attorney for the purchaser, are currently Judges of the Fifth Judicial Circuit and are prohibited by judicial ethics from commenting on potential litigation absent a subpoena. An additional concern to interviewing Judge Garst would be the attorney-client privilege existing on behalf of his client, Dee Burgin.

In addition to other terms contained in the Purchase and Service Agreements (see group exhibit 1), all the assets of the Ambulance Service, which included the real estate, were to be sold in exchange for \$100,000 and the assumption of the County's debt for the real estate in the approximate amount of \$293,000 by Burgin.

The question posed to me is whether there exists a \$100,000.00 debt resulting from Burgins' purchase of the Edgar County Ambulance Service in 2003. The short answer in my opinion is no. A service agreement entered into by the parties (the Edgar County Board and Burgin) on the 23<sup>rd</sup> day of September 2003 provided that Edgar County would turn over all funds in the Special Service No. 1 Ambulance Fund in excess of \$100,000.00 to Burgin for operations. The money withheld was the same figure as the purchase price for all of the non-real estate assets of the Edgar County Ambulance. The checking account for the Edgar County Ambulance Service as of September 30, 2003, the day before the Ambulance Service changed hands, totaled approximately \$133,599.00 (see exhibit 2). This checking account was the sole account through which money passed to or from the Ambulance Service. Cash on



hand is typically considered an asset of a business being purchased. The closing of transaction occurred on October 1<sup>st</sup>, 2003.

During the month of October, 2003, the Edgar County Board authorized payments incurred on behalf of the Ambulance Service in September, in the approximate amount of \$43,000.00. This depleted the \$100,000.00 Ambulance Fund that was withheld by the County from Burgin. The County Board approached Burgin to assume liability for the bills incurred prior to the sale and to restore the County to the previous \$100,000.00 balance in the Ambulance Fund. As a result of various credits and debits to the account, the County's Ambulance Fund balance at the close of business on October 31, 2003 was approximately \$61,459.00 (see exhibit 3). Burgin agreed to restore the fund to the \$100,000.00 balance by reimbursing the County for charges it paid in October of 2003. Burgin did so by accessing his credit line. The Edgar County Ambulance Fund showed a balance at close of business on November 30, 2003 of approximately \$100,261.00 (see exhibit 4).

Interviews with each of the voting members of the County Board as it was constituted in 2003, and with Burgin, indicated that six out of the seven Board Members representing the County/seller as well as Burgin/purchaser understood the transaction to be completed with the exchange of the Ambulance Service's assets and the withholding of \$100,000.00 by the County *in lieu of* a formal cash payment from Burgin. In other words, the \$100,000.00 withheld from the cash account transferred to Burgin was the \$100,000.00 purchase price referenced in the Purchase and Service Agreements. Six of the Seven Board Members and Burgin did not have the understanding nor the intention at the time of the sale that the County would withhold \$100,000.00 from the assets of the Ambulance Service and then expect that there would be *an additional \$100,000.00 payment of new money from Burgin*. This would explain the lack of a cancelled check or other evidence of payments in the amount of \$100,000.00 from Burgin to Edgar County.

Great significance is given to the interviews conducted with the members of the Edgar County Board and Burgin concerning the intent of the parties nine years ago because they would be the witnesses to testify at a trial in this matter if the case were to be litigated to collect the alleged debt. The Court would have to assign little weight to six of the seven Board Members' testimony on behalf the "Plaintiff" (County) as well as the testimony of the "Defendant" (Burgin) concerning the satisfaction of the Purchase and Service Agreements to find that the Defendant remains liable for \$100,000.00. The Court would have to conclude that the \$100,000.00 asset that was withheld by the County was not the intended purchase price and that an additional \$100,000.00 was to be paid by the buyer. In my opinion, there is a lack of sufficient evidence to support this proposition and that a civil lawsuit attempting to prove such may not only be without merit but a waste of the County's resources.

In summary, it is my opinion, after reviewing banking statements, the Purchase and Service Agreements among other documents and interviews with all the individuals who were party to the transaction, that the County received a \$100,000.00 purchase price for the Ambulance Service by withholding a \$100,000.00 cash asset from Burgin when it transferred the assets of the Ambulance Service on October 1, 2003. My opinion is no reflection on whether the idea of selling the Ambulance Service was sound or unsound nor whether the financial terms of the deal were favorable or unfavorable to either party given

the circumstances. It is sufficient that duly elected officials of the County exercised their discretion and voted in favor of the transaction.