

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

RIDES MASS TRANSIT DISTRICT,

Plaintiffs,

vs.

DONALD WISEMAN, EDGAR COUNTY
TREASURER, in his official capacity, and the
EDGAR COUNTY BOARD

Defendant

No. 16-L-16

FILED

JUL - 3 2017

Angela R. Barrett
Circuit Clerk, 5th Judicial Circuit Edgar County

PLAINTIFFS RESPONSE TO DEFENDANTS MOTION TO DISMISS

NOW COMES the Plaintiff Rides Mass Transit District ("Rides"), by and through its attorney, Robert C. Wilson of Jackson & Wilson LLC, and for its Response to Defendant's Motion to Dismiss Plaintiffs First Amended Complaint states as follows:

1. Defendant asserts that Plaintiffs First Amended Complaint must be stricken for failure to comply with Section 2-603 of the Code of Civil Procedure. Plaintiff disagrees that the First Amended Complaint fails to comply with 2-603 and believes that under a theory of joint and several liability that both counts can and should name both defendants, since both, at the courts discretion, could potentially be held liable for the relief sought. However, Plaintiff acknowledges that based on the facts Plaintiffs first amended complaint incorrectly set forth the theory of joint and several liability and seeks leave to amend its complaint.
2. Defendant seeks to dismiss Counts I and II of Rides First Amended Complaint against Defendant Wiseman pursuant to Section 2-615(a) (designated misjoined parties be dismissed"). Plaintiff disagrees that the First Amended Complaint fails to comply with 2-615(a) and believes that under a theory of joint and several liability that both counts can and should name both

defendants, since both, at the courts discretion, could potentially be held liable for the relief sought. However, Plaintiff acknowledges that based on the facts Plaintiffs first amended complaint incorrectly set forth the theory of joint and several liability and seeks leave to amend its complaint.

3. Defendant asserts that Plaintiff's First Amended Complaint must be dismissed pursuant to 735 ILCS 5/2-619(a)(9) because the Edgar County resolution dated June 17, 2013 is void *ab initio* and cannot form the basis for relief. Plaintiff disagrees and believes that there are no fewer than four (4) separate statutes that grant Edgar County the authority to contract under the terms of the Edgar County Resolution dated June 17, 2013. Plaintiffs Memoranda of Law in Support of Plaintiffs Response to Defendants Motion to Dismiss sets forth this argument in more detail. Plaintiff seeks leave to amend to allege additional facts in support of this cause of action.
4. Defendant asserts that Plaintiff's First Amended Complaint must be dismissed pursuant to 735 ILCS 5/2-619(a) (9) because the transfer from Edgar County to Rides Mass Transit District constitutes an impermissible gift. Plaintiff disagrees and believes the funds cannot be considered an impermissible gift because they are funds being transferred to Rides so that Rides can use them for transportation services that would benefit Edgar County. Plaintiffs Memoranda of Law in Support of Plaintiffs Response to Defendants Motion to Dismiss sets forth this argument in more detail. Plaintiff seeks leave to amend to allege additional facts in support of this cause of action
5. Defendant asserts that Plaintiff's First Amended Complaint must be dismissed pursuant to 735 ILCS 5/2-619(a)(9) because the lack of a prior appropriation defeats any obligation of funds on behalf of a county. Plaintiff disagrees and alleges that when the contract was entered into in June of 2013, it would have been impossible for the County to make an appropriation due to the

unknown amount of the sale of assets from the winding up of ECIMTD and the funds were special funds as opposed to general treasury funds which do not require a prior appropriation at the inception of the contract. Plaintiffs Memoranda of Law in Support of Plaintiffs Response to Defendants Motion to Dismiss sets forth this argument in more detail. Plaintiff seeks leave to amend to allege additional facts in support of this cause of action.

6. Defendant asserts that Count I of Plaintiffs Amended Complaint must be dismissed under 735 ILCS 5/2-615 because Plaintiff has failed to allege facts sufficient to support a claim for promissory estoppel. Plaintiff has alleged sufficient facts to support a promissory estoppel claim and Plaintiffs Memoranda of Law in Support of Plaintiffs Response to Defendants Motion to Dismiss shows Plaintiff has sufficiently plead all four (4) elements of a promissory estoppel claim. Plaintiff seeks leave to amend to allege additional facts in support of this cause of action.
7. Defendant asserts that Plaintiff's First Amended Complaint must be dismissed pursuant to 735 ILCS 5/2-619(a)(9) because laches bars Plaintiffs action for promissory estoppel. Plaintiff disagrees and argues that Rides made a more than reasonable attempt to resolve the issues with Edgar County prior to filing the initial complaint. Further, the funds that are in dispute were never disputed as to whether they would be transferred to Rides until sometime in 2015. Plaintiffs Memoranda of Law in Support of Plaintiffs Response to Defendants Motion to Dismiss sets forth this argument in more detail. Plaintiff seeks leave to amend to allege additional facts in support of this cause of action.
8. Finally, Defendant asserts that Count II of Plaintiffs Amended Complaint must be dismissed under 735 ILCS 5/2-615 because Plaintiff has failed to plead a unilateral contract. Plaintiff disagrees and believes Defendant is mistaken as to the elements of a unilateral contract, specifically that proof of assent is not necessary on part of the promisee; performance is

sufficient. Plaintiffs Memoranda of Law in Support of Plaintiffs Response to Defendants Motion to Dismiss sets forth this argument in more detail. Plaintiff seeks leave to amend to allege additional facts in support of this cause of action.

WHEREFORE, Plaintiff prays this Court Deny Defendants Motion to Dismiss or in the alternative grant Plaintiff leave to amend its Complaint to plead additional facts.

Respectfully Submitted,



Robert C. Wilson, Attorney for Plaintiff

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

RIDES MASS TRANSIT DISTRICT,)	
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Plaintiffs,)	
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vs.)	No. 16-L-16
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DONALD WISEMAN, EDGAR COUNTY)	
TREASURER, in his official capacity, and the)	
EDGAR COUNTY BOARD)	
)	
Defendant)	
)	

FILED

JUL - 3 2017

Angela R. [Signature]
Circuit Clerk, Fifth Judicial Circuit Edgar County

**PLAINTIFFS MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS RESPONSE
TO DEFENDANTS MOTION TO DISMISS**

NOW COMES the Plaintiff Rides Mass Transit District ("Rides"), by and through its attorney, Robert C. Wilson, of Jackson & Wilson LLC, and for its Memorandum of Law in Support of Plaintiffs Response to Defendant's Motion to Dismiss the First Amended Complaint, states as follows:

OVERVIEW- PROCEDURAL HISTORY

On August 8, 2016 Rides filed a two count Complaint against Donald Wiseman, in his official capacity as Edgar County Treasurer ("Wiseman"). On September 19, 2016, Defendant Wiseman filed a Motion to Dismiss both counts of Rides' complaint under Sections 2-615 and 2-619. A hearing was held on Defendant's motion January 11, 2017. This Court denied Defendant's motion under 2-619 and granted Defendant's motion under 2-615. Plaintiff was granted twenty-one (21) days to amend its complaint.

On February 9, 2017, Plaintiff filed its First Amended Complaint, adding the Edgar County Board as an additional defendant. Plaintiff's First Amended Complaint contained two

counts, the first count based on promissory estoppel, and the second count based on breach of a unilateral contract. On March 15, 2017, the Defendants filed a joint Motion to Dismiss pursuant to 735 ILCS Sections 2-603, 2-619 and 2-615. Rides responds as follows:

**RESPONSE TO DEFENDANTS BASES FOR DISMISSAL
COMMON TO COUNTS I & II**

**A. RIDES FIRST AMENDED COMPLAINT DOES COMPLY WITH ILCS 735
SECTION 2-603(b) OF THE CODE OF CIVIL PROCEDURE**

Defendant alleges that both Counts I and II of Rides First Amended Complaint impermissibly include two causes of actions within a single count- one against Defendant Wiseman and one against Defendant Edgar County Board. Defendant asserts that each cause of action requires a separate and distinct count for each defendant and that by failing to do so Rides First Amended Complaint is improper pursuant to Section 2-603(b) and, therefore, both counts must be dismissed. Section 2-603(b) 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.”

Plaintiff believes that under a theory of joint and several liability that the counts can and should name both defendants since both, at the courts discretion, could potentially be held liable for the relief sought. However, Plaintiff concedes that its first amended complaint incorrectly set forth the theory of joint and several liability.

Plaintiff seeks leave of this Court to amend its complaint in order to abandon the joint and several liability theory of recovery and set forth separate and distinct causes of action against the defendants.

**B. RIDES FIRST AMENDED COMPLAINT COMPLIES WITH ILCS 735 SECTION
5/2-615 WITH RESPECT TO DEFENDANT-WISEMAN**

Defendant seeks to dismiss Counts I and II of Rides First Amended Complaint against Defendant Wiseman pursuant to Section 2-615(a) (designated misjoined parties be dismissed”). The Defendant states in their Memorandum of Law in Support of their Motion to Dismiss that Rides has failed to allege in Count I that Defendant Wiseman made any promises to Rides, and, in addition, that Count II is lacking of any allegation that Defendant Wiseman had any role in the formation of the alleged unilateral contract. Defendant requests dismissal of both counts because they fail to state a claim against Defendant Wiseman.

Plaintiff does not allege that Defendant Wiseman made any promises to Plaintiff or that Defendant Wiseman had any role in the formation of a unilateral contract with the Defendant. Plaintiff believes that under a theory of joint and several liability that the both counts can and should name both defendants since both, at the courts discretion, could potentially be held liable for the relief sought. However, Plaintiff concedes that its first amended complaint incorrectly set forth the theory of joint and several liability.

Plaintiff seeks leave of this Court to amend its complaint in order to abandon the joint and several liability theory of recovery and set forth separate and distinct causes of action against the two defendants.

C. RESOLUTION DATED JUNE 17, 2013 IS NOT VOID AT INCEPTION

The Defendant is correct that Edgar County is a non-home-rule unit of local government, and therefore, under Dillon’s Rule, “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). Plaintiff asserts that there are multiple

sources of statutory authority which permit Edgar County to release the funds from the liquidation of ECMTD to Rides and will discuss each in turn.

1. The Downstate Transportation Act

First, Edgar County and Rides are covered by the Downstate Public Transportation Act 30 ILCS 740/1 *et seq.* Under 2-2.02(1), a “Participant” is “a city, village, or incorporated town, a county, or a local mass transit district organized under the Local Mass Transit Act (a) serving an urbanized area or over 50,000 population or (b) serving a nonurbanized area.” Section 2-15(b) states “**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” (emphasis added). Edgar County is given express authority in this Act to expend funds for public transportation, which it would be doing by transferring the funds received from the winding up of ECIMTD to Rides, as it contracted to do. Dillon’s Rules is not violated because of the express authority given to Edgar County pursuant to the Downstate Public Transportation Act.

The Defendants claim that the Downstate Public Transportation Act is a theory advanced by the Plaintiff as some kind of *post hoc* rationalization in response to Defendant Wisemans initial motion to dismiss. Defendant goes on to state in its memorandum of law in support of its Motion to Dismiss “It is clear the Downstate Public Transportation Act was not a consideration when the resolution cited by the Amended Complaint was passed.” It appears that the Defendants position is that a statutory grant of authority to contract is waived unless it is timely and expressly asserted by the County within the language of the contract. Plaintiff disagrees and finds that Illinois courts have long considered “laws and statutes in existence at the time a

contract is executed as part of the contract as though they were expressly incorporated therein. The existing laws, statutes, and ordinances become implied terms of the contract as a matter of law” *McMahon v. Chicago Mercantile Exch.*, 582 N.E.2d 1313, 1319 (Ill. App. 1st Dist. 1991). Further, Plaintiff denies any “concocted” *post hoc* rationalization due to Rides CEO Bill Jung possessing over twenty (20) years of experience in dealing with the Downstate Transportation Act. However, regardless of whether pointing to the Downstate Transportation Act was a *Post hoc* rationalization or not, the authority granted by the Downstate Transportation Act to Edgar County is an implied term of the contract as a matter of law and that authority is not waived due to a failure to expressly cite the authority within the contract itself.

Defendant goes on to assert that Section 17(b) of the Downstate Transportation Act is not applicable because Plaintiff has failed to comply with Section 2-17(a)’s requirement of filing three (3) copies of the agreement with the Illinois Commerce Commission. Plaintiff does not believe Defendants non-compliance argument somehow avoids the fact that the Downstate Transportation Act grants Edgar County the authority to enter into an agreement with Rides. Any non-compliance with ICC is a separate and distinct issue that would arise solely between Rides and the ICC. The authority granted by Section 17(b) to Edgar County to enter into a contract with Rides is not inapplicable because Rides has allegedly failed to comply with the ICC. That issue is between Rides and the ICC.

2. Section 5-1005(3) of the Counties Code

Second, Defendant is granted authority to enter into a contract with Plaintiff under 55 ILCS 5/5-1005 of the Counties Code. Section 5-1005 (3) specifically provides that counties have the power “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.” One such corporate power

possessed by Edgar County is the power to annex into a mass transit district. This power is granted to Edgar County under 70 ILCS 3610/3.01 (The Local Mass Transit District Act).

In exercising its corporate power to enter into an annexation agreement with Rides, Edgar County was authorized by Section 5-1005(3) of the Counties Code to “**make all contracts and do all other acts in relation to property and concerns of the county necessary to the exercise of its corporate powers.**” Here, it was necessary for Edgar County to contract with Rides for the ECIMTD liquidation funds in order to exercise its corporate power otherwise Rides would not have approved the annexation.

Plaintiff seeks leave to amend its complaint to further advance this theory.

3. Section 5-1005(21) of the Counties Code

Third, Defendant is granted authority to enter into a contract with Plaintiff under 55 ILCS 5/5-1005 of the Counties Code. Section 5-1005 (21) specifically provides that counties have the power “**To appropriate and expend funds from the county treasury for economic development purposes,** including the making of grants to any other governmental entity or commercial enterprise deemed necessary or **desirable for the promotion of economic development in the county.**”

When Edgar County made the decision to dissolve East Central Mass Transit District and be annexed into Rides Mass Transit District they did so in part because “East Central Mass Transit District is no longer able to provide mass transit transportation services on a cost efficient basis” (See Paragraph 3 of Exhibit A) and the economic incentives offered by the CEO of Rides, Mr. Bill Jung, to the Edgar County Board at a special meeting held on June 17, 2013 (a transcript of the Official Minutes is attached hereto as Exhibit I) where he stated to the Board that upon Edgar County annexing into Rides Mass Transit District “all employees of East Central Illinois

Mass Transit District would keep their jobs and get a salary increase.” The record reflects that the decision to dissolve ECMTD and annex into Rides Mass Transit District was a decision made by the Edgar County Board in order to promote economic development within Edgar County. Expending funds from the Edgar County Treasury to Rides in exchange for the economic benefits Rides will provide the county is at the heart of the authority provided to counties under Section 5-1005 (21) of the Counties Code.

Plaintiff seeks leave to amend its complaint to further advance this theory.

4. The Intergovernmental Cooperation Act

Fourth, the Defendant was within its statutory right to enter into the contract under the authority of the Intergovernmental Cooperation Act 5 ILCS 220/5. Section 5 provides:

“Intergovernmental contracts. Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity or undertaking or to combine, transfer, or exercise any powers, functions, privileges, or authority which any of the public agencies entering into the contract is authorized by law to perform, provided that such contract shall be approved by the governing bodies of each party to the contract and except where specifically and expressly prohibited by law. **Such contract shall set forth fully the purposes, powers, rights, objectives and responsibilities of the contracting parties.**

Plaintiff and defendant are two public units of government that entered into a contract to perform governmental services (i.e., mass public transportation services). The contract entered into clearly set forth the purposes, powers, rights, objectives and responsibilities of the two bodies and the contract was approved by the governing bodies of both Rides Mass Transit District and Edgar County.

The purpose of the contract is stated “the County of Edgar be annexed into the Rides Mass Transit District on July 1st, 2013” (See Exhibit B Paragraph 2). The purpose of the contract has been fulfilled to the benefit of Edgar County.

The powers granted to the parties by the contract include Rides being 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.” (See Exhibit B Paragraph 5) Edgar Counties power to “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.” (See Exhibit B Paragraph 3). Edgar County has exercised its power to have representation on the Rides Mass Transit District Board of Trustees by appointing King Sutton to the Rides Board at a special meeting held by the Edgar County Board on June 17, 2013. (the Official Minutes of the meeting are attached hereto as Exhibit I).

The rights granted to the contracting parties include the right of Edgar County to “be annexed into the Rides Mass Transit District on July 1st, 2013” (See Exhibit B Paragraph 2) and in doing so the right to receive mass public transportations services from Rides for the benefit of the people of Edgar County. The rights granted to Rides under the annexation agreement include the right to receive certain funds from the Edgar County Treasury. The contract provides: “Further be it ordained and resolved that all assets received by Edgar County Treasure upon the dissolution of the East Central 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.” (See Exhibit B Paragraph 4). Rides has honored rights granted to Edgar County under the contract and the people of Edgar County have enjoyed the benefit of those rights being honored. However, Edgar County continues not to honor Rides’ right to receive funds from the Treasurer as specified in the annexation agreement.

The objective of the annexation agreement was for Edgar County “be annexed into the Rides Mass Transit District on July 1st, 2013” (See Exhibit B Paragraph 2) and for Edgar County to contribute funds to Rides in order to assist in helping Rides meet that objective and provide more cost effective means of transportation services. The objective of the contract has been frustrated by Edgar County refusing to perform the express terms as bargained for by the two contracting parties.

The responsibilities of the contracting parties are those that all contracting parties possess, “The duty of good faith and fair dealing is implied in every contract and requires a party vested with contractual discretion to exercise it reasonably, and not arbitrarily, capriciously, or in a manner inconsistent with the reasonable expectations of the parties.” *Reserve at Woodstock, LLC v. City of Woodstock*, 958 N.E.2d 1100, 1112–13 (Ill. App. 2d Dist. 2011). Edgar County has failed to exercise the duty of good faith and fair dealings by choosing to perform only the terms of the contract that directly benefit Edgar County while refusing to perform the terms that benefit Rides.

Therefore, Defendant’s Motion to Dismiss pursuant to Section 2-619 should be denied or in the alternative Plaintiff requests leave to amend the complaint as the Resolution date June 17, 2013 is not Void *Ab Initio* due to Edgar County possessing multiple sources of authority to enter into the contract which Rides respectfully requests that it is given leave to amend to adequately plead.

D. THE TRANSFER FROM EDGAR COUNTY TO RIDES IS NOT A “GIFT.”

Defendant’s memorandum under Section D shows a limited knowledge of the way a transit district functions. Rides was created under the statutory authority of 70 ILCS 3610/1 *et seq*, the Local Mass Transit District Act. A mass transit district created under the Act is

considered a unit of government. Rides, as well as other mass transit districts, rely on grant funding from both the state and federal government in order to provide services. Grant funding is provided on a reimbursement basis, which is done quarterly.

ECIMTD, at its inception, was funded by direct investments and credit arrangements by Edgar County Senior Services. Edgar County did not provide any seed money for ECIMTD, and all funds borrowed at the start ECIMTD's inception were paid back in full to Edgar County Senior Services. The grant funding that ECIMTD received was for the purpose of providing mass transit services to Edgar and Clark Counties. Pursuant to statute, ECIMTD's assets were liquidated and were transferred to the Treasurer of the Defendant, Edgar County. The Edgar County ordinance of June 17, 2013 instructed the Edgar County Treasurer to transfer assets to Rides, the successor mass transit district, for the same purpose the funds would have been used had Edgar County not chose to dissolve ECIMTD due to economic hardship, providing mass transit services to the people of Edgar County.

The Defendant cites *Sherlock v. Village of Winnetka* in support of its argument that transferring the assets from the ECIMTD winding up would be an impermissible gift to Rides. In *Sherlock*, the town council passed an ordinance allowing the village to purchase land to build a public school. 59 Ill. 389, 396. Bonds were issued to purchase land and erect a building. *Id.* The council members purchased all of the bonds, and then built a private school, of which most of them were trustees and incorporators of. *Id.* at 397. The court found that "The council had no authority to purchase land, erect buildings, and issue bonds pledging the corporate property, and the faith and credit of the [village] for any but [village] purposes." *Id.* at 399.

The current case is vastly different from *Sherlock*. The funds that were transferred to Edgar County were from the winding up of ECIMTD. The funds that were transferred to Edgar

County were funds resulting from the state and Federal grants to ECIMTD for mass transit. Rides is demanding that the funds be transferred to Rides, and the funds will continue to be used for the purpose of mass transit activities. Edgar County, and its population, continue to receive the benefit of having a mass transit provider. The funds that were once being used for a mass transit district in Edgar County would continue to be used for the same purpose, and the county will continue to receive the benefit of those funds. The transaction would not be a “gift” but rather an expenditure of funds expressly authorized by statute for mass transit purposes.

Therefore, Defendant’s Motion to Dismiss should be denied, as the transfer of funds would not be an impermissible gift or in the alternative Plaintiff requests leave to amend to allege additional facts addressing the “gift” issue.

E. A PRIOR APPROPRIATION BY THE COUNTY WAS NOT NECESSARY

The Defendant’s argue that any contract between the Plaintiff and Defendants would be void due to there being no prior appropriation. However, when the contract was entered into in June of 2013, it would have been impossible for the County to make an appropriation due to the unknown amount of the sale of assets from ECIMTD. It took ECIMTD over a year to liquidate all of its assets. Under 55 ILCS 5/6-1002, an annual budget “shall contain*** € A schedule of proposed appropriation 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.”

At the time the contract was entered into between the Plaintiff and Defendants, it was known by all parties that assets needed to be liquidated. What was not known was how long this process would take, or how much money would be brought in from the liquidation. In October of

2014, the liquidation was complete, and Defendant Wiseman received the final payment from ECIMTD. At that time, Defendant Edgar County Board should have made an appropriation for the funds to Rides, or, appropriated the funds to Rides in its next annual budget. Neither of these actions were taken. Defendant Wiseman made a similar argument in his motion to dismiss Rides' initial complaint and the court stated in its ruling "I don't find where they necessarily needed to be appropriated in a budget. They were received by – by the county from the dissolution of the East Central Illinois Mass Transit District." (See page 22 lines 22-24 through page 23 lines 1-2 of Exhibit J attached hereto).

Plaintiff also argues that a prior appropriation is not necessary where a special fund is provided for the payment of the expense and the general funds of the municipal corporation are not obligated. *Wilson v. Village of Forest View*, 69 Ill. App. 2d 400, 217 N.E.2d 398 (1st Dist. 1966) (village could have legally executed contract for water works improvement and sewer system payable out of **special fund**, and there was thus no necessity for **appropriation** from general **fund** at inception of contract with duly licensed civil engineer to prepare necessary plans, specifications, etc., in order to make contract valid).

Here, Edgar County contracted to transfer funds they were set to receive pursuant the terms of the Local Mass Transit District Act, not funds they would receive from a general revenue stream such as county property or sales tax. The funds that Edgar County contracted to transfer to Rides were special funds that would not come out of the general treasury funds and therefore a prior appropriation of those funds was not necessary at inception of the contract.

Therefore, Defendant's Motion to Dismiss should be denied because a prior appropriation was not necessary.

RESPONSE TO DEFENDANTS BASES FOR DISMISSAL
SPECIFIC TO COUNT I

A. PLAINTIFF ALLEGED SUFFICIENT FACTS TO SUPPORT A CLAIM FOR PROMISSORY ESTOPPEL

A motion to dismiss pursuant to section 2-615 tests the legal sufficiency of a pleading. *Doe v. Calumet City*, 161 Ill.2d 374, 384-85, 204 Ill.Dec. 274, 641 N.E.2d 498, 503 (1994). In determining the legal sufficiency of a complaint, all well-pleaded facts are taken as true and all reasonable inferences from those facts are drawn in favor of plaintiff. *Connick v. Suzuki Motor Co.*, 174 Ill.2d 482, 490, 221 Ill.Dec. 389, 675 N.E.2d 584, 588 (1996).

Count I of Plaintiff's Amended Complaint seeks relief under the common law doctrine of promissory estoppel. "To establish a claim, the plaintiff must 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 defendants, and (4) plaintiff relied on the promise to its detriment. *Newton Tractor Sales, Inc. v. Kubota Tractor Corp.*, 233 Ill. 2d 46, 51 (2009).

The Edgar County resolution passed on June 17, 2013 was unambiguous in its promise to Rides. The resolution clearly stated that "all assets received by Edgar County Treasurer upon dissolution of the East Central 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." This statement was a clear, concise, and straightforward promise of what would happen to the assets of ECIMTD once received by the Edgar County Treasurer, and that promise was that the assets "**shall** be transferred, assigned and conveyed" to Rides. (emphasis added). "Thus, the doctrine is recognized as creating a contract implied in fact, which imposes a

contractual duty based on a promissory expression by the promisor that shows an intention to be bound.” *Matthews v. Chicago Transit Auth.*, 2016 IL 117638, ¶ 93.

Rides relied on the Defendant’s promise to transfer the assets from ECIMTD when Rides annexed Edgar County into its mass transit district and started providing mass transit services starting July 1, 2013. The negotiations between Rides and Edgar County for Rides to provide mass transit services in the county took place over a period of several months. One of the items discussed during this negotiation was the transfer of assets from the winding down of ECIMTD to Rides once the county received the assets. Due to the extensive negotiations between Rides and the Defendants, it was foreseeable that Rides would rely on the promises made during negotiations, and the promises made in the resolution to transfer, assign and convey the funds received from the winding down on ECIMTD.

When Rides relied on the promises made by Defendants to transfer, assign and convey the assets from the dissolution of ECIMTD, it was to Rides’ detriment. When Rides began servicing Edgar County, they made significant investments into Edgar County. Rides employed fifteen individuals from Edgar County, at an approximate annual cost of \$730,186. Rides also purchased a building in Edgar County for a local headquarters, at a cost of approximately \$635,000. Rides relied on the Defendant’s promise when it made decisions to invest in both employees and property in Edgar County. Further, Rides purchased the building in Edgar County only after it had been informed of the final dollar amount of the liquidation of ECIMTD, factoring that amount in to its ability to purchase the property. When the Defendants did not remit the funds to Rides, Rides was forced to budget other ways to make up for the shortfall. This was to Rides’ detriment.

Therefore, Rides has plead sufficient facts for a claim of promissory estoppel, and Defendant's motion to dismiss should be denied or in the alternative Plaintiff requests leave to amend its complaint to allege additional facts.

B. PLAINTIFFS CLAIM IS NOT BARRED BY LACHES

Defendant claims that Rides claim for promissory estoppel is barred by the doctrine of *laches*. “[D]efendants fail to recognize that is not simply a matter of time; rather it is a principle of ‘inequity founded on some change in the condition or relation of the property and the parties.’ That is, it must appear that a plaintiff’s unreasonable delay in asserting his rights has prejudiced and mislead the defendant, or caused him to pursue a course different from what he would have otherwise taken.” *People ex rel. Casey v. Health and Hospitals Governing Commission of Illinois*, 69 Ill.2d 108, 115 (1977) (internal citation omitted). In a letter to Plaintiff’s counsel dated June 19, 2014, Edgar County State’s Attorney Mark Isaf states “I have been advised that Edgar County did not contribute any funds of its own to the ECIMTD and therefore the grant funds received for mass transit purpose for citizens of Edgar County should be returned to the successor of ECIMTD to accomplish the same purpose” (see attached Exhibit K).

The funds from ECIMTD’s winding up were transferred to the Edgar County Treasurer on July 28, 2014, and both Rides and counsel for Rides have been in direct and continuous communication with Edgar County State’s Attorney Mark Isaf. Rides has consistently maintained its contractual right to the funds. Plaintiff’s counsel has sent no fewer than three communications to Isaf (see attached Exhibits L, M and N) regarding the funds being held by Edgar County. It was not until December 22, 2015, in an email correspondence from Isaf, that Rides was made aware that Edgar County was refusing to remit the funds from the winding up of ECIMTD to Rides (see attached Exhibit O). Edgar County has been aware of the dispute and

disagreement regarding the rightful owner of the funds since the funds were paid to the Edgar County Treasurer.

Rides made a more than reasonable attempt to resolve the issues with Edgar County prior to filing the current complaint. Further, the funds that are in dispute were never disputed as to whether they would be transferred to Rides until sometime in 2015. These funds would not have been part of the Edgar County budget, because they were originally earmarked to be paid out to Rides.

Therefore, Defendant's Motion to Dismiss Count I should be denied or in the alternative Plaintiff requests leave to amend its complaint to allege additional facts.

RESPONSE TO DEFENDANTS BASES FOR DIMSISSAL
SPECIFIC TO COUNT II

A. PLAINTIFF HAS ALLEGED FACTS SUFFICIENT TO SUPPORT A CLAIM FOR AN ENFORCEABLE UNILATERAL CONTRACT

It is well established that a contract forms when there has been an offer, acceptance of that offer, and consideration. *Estate of Chosnyka v. Meyer*, 223 Ill.App.3d 493, 495, 165 Ill.Dec. 808, 585 N.E.2d 204, 206 (1992). In a unilateral contract, proof of assent is not necessary on part of promisee; it is sufficient if required act is performed by promisee. *Redd v. Woodford County Swine Breeders, Inc.*, 370 N.E.2d 152 Ill. App. 4th Dist. (1977). Further, a promise lacking mutuality at its inception becomes binding upon promisor after performance by promisee. *Id.*

The June 17, 2013 Edgar County Resolution is a binding and valid unilateral offer which set forth all consideration offered by Edgar County and specifically described how Rides Mass Transit District could accept those terms. Defendant argues in its motion to dismiss that Plaintiff alleges in its Breach of Unilateral Contract claim nothing more than "[the Edgar resolution] was

an offer of a unilateral contract” and “Rides accepted Edgar County’s offer to contract” and that these allegations amount to nothing more than legal conclusions.

Plaintiff makes specific factual allegations that the Edgar County Board found an opportunity to join a contiguous mass transit district, namely, Rides Mass Transit District, and in order to pursue that opportunity Edgar County drafted a Resolution on June 17, 2013 seeking annexation into Rides Mass Transit District. The June 17, 2013 Edgar County Resolution offers to Rides Mass Transit District certain terms of annexation. The Edgar County Resolution is an offer extended to Rides which if accepted by performance, would become effective. If Rides decided not to perform, the Resolution would remain ineffective. A unilateral contract does not require mutual assent, just performance. Rides performed.

Defendant also asserts that “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 Count Board, the Edgar County Treasurer, or the transfer of the funds referenced in the Edgar Resolution.” Defendant argues that this cannot be an acceptance of the offer because it does accept each of the terms individually. The performance requested by Edgar County was for Rides to approve the resolution by 2/3 vote. Again, a unilateral contract does not require mutual assent, just performance. Rides performed.

Plaintiff recognizes the court’s comments at the January 11, 2017 hearing on Defendant’s original Motion to Dismiss where this court states:

“The Plaintiff fails to sufficiently set forth the offer, the acceptance, and consideration. In this courts view, the county’s resolution was not an offer. The Plaintiffs resolution was not an acceptance of an offer, and based on those circumstances, there is an inadequate showing of consideration.”
(See Page 22 lines 5-11 of Exhibit J).

However, at the time of the courts comments the court was looking at the two resolutions in the context of creating a contract between the Edgar County Treasurer and Rides rather than in the context of creating contract between Edgar County and Rides, which is the Plaintiffs position here. The court commented on the existence of a contractual relationship between Rides and Edgar County at the January 11, 2017 hearing with the following:

If a contractual relationship was in fact established, it was between the plaintiff and the county, not the plaintiff and the county treasurer.”
(See Page 22 lines 14-17 of Exhibit J).

Plaintiff believes that the courts comments at the January 11, 2017 hearing regarding Plaintiffs inadequate showing of facts supporting the creation of a contract between the Edgar County Treasurer and Rides are unrelated to the facts presented to the court here which are sufficient to show a contractual relationship between Edgar County and Rides.

Therefore, Defendant’s Motion to Dismiss Count II should be denied or in the alternative Plaintiff requests leave to amend its complaint to allege additional facts.

**RIDES MASS TRANSIT DISTRICT AND EDGAR COUNTY BOARD ENTERED INTO
A VALID ANNEXATION AGREEMENT UNDER THE LOCAL MASS TRANSIT
DISTRICT ACT**

In Illinois a county government and a mass transit district can enter into an annexation agreement under the express statutory authority of the Local Mass Transit District Act (hereinafter “the Act”). 70 ILCS 3610/3.01. In order to enter into a valid annexation agreement the Act requires that (1) the county to adopt a petition to be annexed by ordinance or resolution approved by a majority vote of the county board; (2) that such ordinance or resolution be approved by a 2/3 vote of the members of the board of trustees of the district and (3) a certified copy of the ordinance or resolution of annexation shall be filed by the secretary of the board in the same manner as provided for upon creation of the District. 70 ILCS 3610/3.01.

The statutory framework of the annexation provision within the Local Mass Transit District Act recognizes that annexations are contractual in nature. By requiring that the county present a proposed resolution to be annexed but making it so that that resolution only becomes binding upon acceptance by 2/3 vote of the board of the mass transit district the Act affords the mass transit district the opportunity review the terms and make a determination on whether to approve the annexation or not. In short, the Act expressly and unambiguously requires a meeting of the minds before annexation can occur. If the mass transit district doesn't vote, the county resolution has no effect on the operations of the mass transit district.

Here, Plaintiff and Defendant satisfied all step necessary under the Act and in doing so entered into a valid annexation agreement. The June 17, 2013 Edgar County Resolution reveals that Edgar County knew it was acting under the authority of the Local Mass Transit Act. First the Resolution expressly cites the Act "Local Mass Transit District Act (70 ILCS 3610)" (See Exhibit B Paragraph 3). Second, the Resolution seeks to comply with the Act by providing that the resolution have an effective date "when such resolution and ordinances approved by 2/3 vote of the Rides Mass Transit District Board." (See Exhibit B Paragraph 6).

Now, despite the clear unambiguous language of the June 17, 2013 Resolution the Defendant asserts within their Motion to Dismiss that Rides Resolution 153 which was passed on June 20, 2013 by a 2/3 vote of the Rides Board is "a completely different Resolution that contained none of the provisions in the Edgar resolution". The Local Mass Transit Act grants the County the authority to propose the terms of the annexation and places no requirement on the mass transit district to mirror the terms when approving the county resolution. The Act is clear that the resolution must be approved by a 2/3 vote of the mass transit district in order to become effective. The Act does require the mass transit district to approve each specific term of the

county resolution by a 2/3 vote. If the mass transit district doesn't like one of the terms within the resolution they can choose not to vote and the county can propose a different resolution. It's a bargained for exchange.

Further, Illinois Courts recognize annexation agreements as binding and valid contracts *Cummings v. City of Waterloo*, 683 N.E.2d 1222, 1230 (Ill. App. 5th Dist. 1997). "Parties to a contract are free to include any terms they choose, as long as those terms are not against public policy and do not contravene some positive rule of law". *In re Nitz*, 739 N.E.2d 93, 98 (Ill. App. 2d Dist. 2000). The language of the Annexation Agreement entered into between Edgar County and Rides provided:

"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 [ECIMTD] shall be transferred, assigned and conveyed by the Treasurer to Rides Mass Transit District as the County's contribution to Rides Mass Transit District."

Edgar County proposed this term of the agreement and Rides accepted it along with accepting the Resolution in its entirety. Edgar County did not violate any public policy by proposing this term of the agreement. In fact, it should be considered strong public policy to transfer funds from the winding up of a dissolved mass transit district to the successor mass transit district so that those funds can continue to be used for public transportation services. Additionally this term of the agreement does not violate any positive rule of law. There are multiple statutory sources of authority, as Plaintiff has pointed to in this Response, which allow the Plaintiff and Defendant to contract for those funds to be transferred.

On or about July 28, 2014, a cashier's check was sent to the Edgar County Treasurer in the amount of \$ \$150,775.97 as proceeds from the liquidation of ECIMTD's assets (see attached Exhibit D). On October 6, 2014, a cashier's check was sent to the Edgar County Treasurer in the

amount of \$1,374.52 as final payment for the liquidation of ECIMTD's assets (see attached Exhibit E). Defendant has failed to remit the \$152,150.49 in liquidated assets to Rides as promised under the terms of the Annexation Agreement. The failure to remit the funds to Rides is a material breach of the terms of the annexation agreement entered into between Edgar County and Rides.

For the defendant to now only recognize those terms of the agreement that benefit the defendant, Edgar County, (i.e., appointing King Sutton to Rides Board and receiving transportation services from Rides) and abandon those that do not benefit Edgar County is a clear material breach of the agreement. The provision that the Edgar County Treasurer would transfer the assets received by the Edgar County Treasurer to Rides was certainly a material part of the annexation agreement or we wouldn't be in court on the issue. The absence of the provision directing the Edgar county Treasurer to release those funds would have affected Rides' decision to annex Edger County into its district.

Plaintiff requests leave to amend its complaint and add a breach of contract claim solely against Edgar County Board for breaching the terms of the Annexation Agreement entered into by the parties under the authority of the Local Mass Transit District Act.

Respectfully Submitted,


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

RIDES MASS TRANSIT DISTRICT,

Plaintiffs,

vs.

DONALD WISEMAN, EDGAR COUNTY
TREASURER, in his official capacity, and the
EDGAR COUNTY BOARD

Defendants

No. 16-L-16

FILED

JUL 10 2017

Angela R. Barrett
Circuit Clerk, 5th Judicial Circuit Edgar County

ORDER

THIS MATTER, having come before the Court on the Joint Motion of the parties and the Court being fully advised finds that it is and should be granted.

IT IS SO ORDERED:

1. Plaintiff is granted leave to file a Second Amended Complaint no later than August 1, 2017.
2. Defendants shall answer or otherwise plead to the Plaintiff's Second Amended Complaint no later than August 29, 2017.
3. The Hearing set for Wednesday, July 12, 2017 is vacated.

ENTER: 7/5/17

[Signature]
Honorable James R. Glenn, Circuit Judge

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