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November 1, 2017

Honorable Kurt Prenzler, CPA  
Madison County Board Chairman  
Madison County Administration Building  
157 N. Main Street, Suite 165  
Edwardsville, IL 62025-1963

In RE: Fosterburg Water District

Dear Chairman Prenzler:

As previously indicated to you, this office represents Fosterburg Water District ("FWD"). On October 31, 2017 you expressed concern about one of FWD's trustees having an economic interest in contracts. More specifically, your concern was whether Mr. Frederick "Fritz" Aljets may have placed himself in violation of economic interest contracts by having a seat on the board of FWD while FWD did business with Aljets Automotive, Inc.

It is true that the Public Water District Act contains a general prohibition of direct or indirect interest by a trustee or employee in any contract work or business of the governmental unit. This type of prohibition most likely can be found for any or all of the myriad governmental entities established under Illinois law. For a more clear definition of what "Interest in Contracts" is to mean under the Laws of the Constitution of the State of Illinois, FWD has always looked to the provisions of the Public Officer Prohibited Activities Act found at 50 ILCS 105/0.01 et seq. More specifically, the provisions of Section 105/3 more clearly set out the nature of prohibited interest in contracts. Enclosed with this letter is a copy both of Public Water District Act section 70 ILCS 3705/4 setting out general prohibition language as well as the most up-to-date provisions of 50 ILCS 105/3.

In reviewing this matter with the FWD manager and secretary, it is indicated the provisions of 50 ILCS 105/3(b)(2) have been strictly adhered to when involving any approved contracts or payments to Aljets Automotive, Inc. In essence, the amount of any one contract cannot exceed \$2,000, and the aggregate payments in any one fiscal year cannot exceed \$4,000.

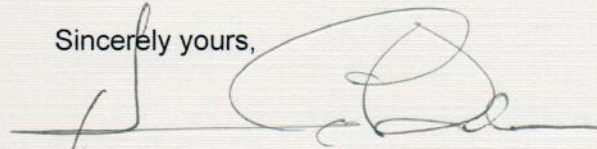
Upon request, FWD has provided the enclosed history of all payments to Aljets Automotive, Inc. over the course of the most recent ten (10) fiscal years, showing both individual payments and annual aggregates. As noted, no one contract exceed \$2,000, and no fiscal year's aggregate exceeded \$4,000.



Letter to: Honorable Kurt Prenzler, CPA  
Madison County Board Chairman  
November 1, 2017  
Page 2

As indicated, FWD has monitored this issue very closely in past years and will continue to do so prospectively so long as Mr. Aljets retains his ownership interest in Aljets Automotive, Inc. and his position as an appointed member of the FWD Board of Trustees. As the appointing authority for this public body, if you have any further questions relating to this matter, please do not hesitate to let this office or the district know.

Sincerely yours,

A handwritten signature in blue ink, appearing to read 'Kenneth E. Balsters', written over a horizontal line.

Kenneth E. Balsters

KEB/II

Enclosures

cc: Mark Voumard, Manager/FWD  
Steve Strohbeck, Chairman Board of Trustees/FWD



## Sec. 4

(70 ILCS 3705/4) (from Ch. 111 2/3, par. 191)  
 Sec. 4. A board of trustees consisting of 7 members for the government, control and management of the affairs of the business of each such water district organized under this Act shall be created in the following manner:

(1) If the district lies wholly within a single

township but does not also lie wholly within a municipality, the board of trustees of that township shall appoint the trustees for the district but no voting member of the township board is eligible for such appointment;

(2) If the district is wholly contained within a

municipality, the governing body of the municipality shall appoint the trustees for the district;

(3) If the district is wholly contained within a

single county, the trustees for the district shall be appointed by the presiding officer of the county board with the advice and consent of the county board;

(4) If the district is located in more than one

county, the number of trustees who are residents of a county shall be in proportion, as nearly as practicable, to the number of residents of the district who reside in that county in relation to the total population of the district. Trustees shall be appointed by the county board of their respective counties, or in the case of a home rule county as defined by Article VII, Section 6 of the Constitution of 1970, by the chief executive officer of that county with the advice and consent of the county board.

Upon the expiration of the term of a trustee who is in office on the effective date of this Amendatory Act of 1975, the successor shall be a resident of whichever county is entitled to such representation in order to bring about the proportional representation required herein, and he shall be appointed by the appointing authority of that county. Thereafter, each trustee shall be succeeded by a resident of the same county who shall be appointed by the same appointing authority; however, the provisions of the preceding paragraph shall apply to the appointment of the successor to each trustee who is in office at the time of the publication of each decennial Federal census of population. Within 60 days after the adoption of this Act as provided in Section 2 hereof, the appropriate appointing authority shall appoint 7 trustees who shall hold that office respectively one for one, one for 2, one for 3, 2 for 4 and 2 for 5 years from the first Monday of May next after their appointment as designated by the appointing authority at the time of appointment and until their successors are appointed and have qualified. Thereafter on or after the first Monday in May of each year the appointing authority shall appoint successors whose term shall be for 5 years commencing the first Monday in May of the year they are respectively appointed. If the circuit court finds that the size, number of members, and scale of operations of the water



district justifies a Board of Trustees of less than 7 members he shall rule that such board shall have 3 or 5 members. Initial appointments to a 3 member board shall be as follows: one for one, one for 2, and one for 3 years. Initial appointments to a 5 member board shall be as follows: one for one, one for 2, one for 3, one for 4 and one for 5 years. In each such case the term of office and method of appointing successors shall be as provided in this Section for 7 member boards. The appointing authority shall require each of such trustees to enter a bond with security to be approved by the appointing authority in such sum as such appointing authority may determine. A majority of the Board of Trustees shall constitute a quorum, but a smaller number may adjourn from day to day. No trustee or employee of such district shall be directly or indirectly interested in any contract, work or business of the district or the sale of any article, the expense, price or consideration of which is paid by such district, nor in the purchase of any real estate or property for or belonging to the district. Whenever a vacancy in such board of trustees shall occur either from death, resignation, refusal to qualify or for any other reason the appointing authority shall have power to fill such vacancy by appointment. Such persons so appointed or qualified for office in the manner hereinbefore stated shall thereupon assume the duties of the office for the unexpired term for which such person was appointed. For terms commencing before the effective date of this amendatory Act of the 96th General Assembly, the trustees appointed under this Act shall be paid a sum of not to exceed \$600 per annum for their respective duties as trustees, except that trustees of a district with an annual operating budget of \$1,000,000 or more may be paid a sum not to exceed \$1,000 per annum. For terms commencing on or after the effective date of this amendatory Act of the 96th General Assembly, the trustees shall be paid a sum of not to exceed \$1,200 per annum. However, trustees appointed under this Act for any public water district which acquires by purchase or condemnation, or constructs, and maintains and operates sewerage properties in combination with its waterworks properties, under the provisions of Section 23a of this Act, shall be paid a sum of not to exceed \$2,000 per annum for their respective duties as trustees. Compensation in either case shall be determined by resolution of the respective boards of trustees, to be adopted annually at their first meeting in May. Any public water district organized under this Act with a board of trustees consisting of 7 members may have the size of its board reduced as provided in Section 4.1. (Source: P.A. 96-614, eff. 1-1-10.)



## Sec. 3 Prohibited interest in contracts.

This section is likely affected by New Legislation. Although the new codification has not yet been released, the likely impact of the new legislation is reflected below.

**Codified Section:**

(50 ILCS 105/3) (from Ch. 102, par. 3)  
Sec. 3. Prohibited interest in contracts.

(a) No person holding any office, either by election or appointment under the laws or Constitution of this State, may be in any manner financially interested directly in his own name or indirectly in the name of any other person, association, trust, or corporation, in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote. No such officer may represent, either as agent or otherwise, any person, association, trust, or corporation, with respect to any application or bid for any contract or work in regard to which such officer may be called upon to vote. Nor may any such officer take or receive, or offer to take or receive, either directly or indirectly, any money or other thing of value as a gift or bribe or means of influencing his vote or action in his official character. Any contract made and procured in violation hereof is void. This Section shall not apply to any person serving on an advisory panel or commission, to any director serving on a hospital district board as provided under subsection (a-5) of Section 13 of the Hospital District Law, or to any person serving as both a contractual employee and as a member of a public hospital board as provided under Article 11 of the Illinois Municipal Code in a municipality with a population between 13,000 and 16,000 that is located in a county with a population between 50,000 and 70,000.

(b) However, any elected or appointed member of the governing body may provide materials, merchandise, property, services, or labor, subject to the following provisions under either paragraph (1) or (2):  
(1) If:

A. the contract is with a person, firm,

partnership, association, corporation, or cooperative association in which such interested member of the governing body of the municipality has less than a 7 1/2% share in the ownership; and

B. such interested member publicly discloses the

nature and extent of his interest prior to or during deliberations concerning the proposed award of the contract; and

C. such interested member abstains from voting on

the award of the contract, though he shall be considered present for the purposes of establishing a quorum; and

D. such contract is approved by a majority vote

of those members presently holding office; and

E. the contract is awarded after sealed bids to

the lowest responsible bidder if the amount of the contract exceeds \$1500, or awarded without bidding if the amount of the contract is less than \$1500; and

F. the award of the contract would not cause the

aggregate amount of all such contracts so awarded to the same person, firm, association, partnership, corporation, or cooperative association in the same fiscal year to exceed \$25,000.

(2)

If:

A. the award of the contract is approved by a

majority vote of the governing body of the municipality provided that any such interested member shall abstain from voting; and

B. the amount of the contract does not exceed

\$2,000; and

C. the award of the contract would not cause the

aggregate amount of all such contracts so awarded to the same person, firm, association, partnership, corporation, or cooperative association in the same fiscal year to exceed \$4,000; and

D. such interested member publicly discloses the

nature and extent of his interest prior to or during deliberations concerning the proposed award of the contract; and

E. such interested member abstains from voting on

the award of the contract, though he shall be considered present for the purposes of establishing a quorum.

(b-5) In addition to the above exemptions, any elected or appointed member of the governing body may provide materials, merchandise, property, services, or labor if:

A. the contract is with a person, firm, partnership,

association, corporation, or cooperative association in which the interested member of the governing body of the municipality, advisory panel, or commission has less than a 1% share in the ownership; and

B. the award of the contract is approved by a



majority vote of the governing body of the municipality provided that any such interested member shall abstain from voting; and

C. such interested member publicly discloses the

nature and extent of his interest before or during deliberations concerning the proposed award of the contract; and

D. such interested member abstains from voting on the

award of the contract, though he shall be considered present for the purposes of establishing a quorum.

(c) A contract for the procurement of public utility services by a public entity with a public utility company is not barred by this Section by one or more members of the governing body of the public entity being an officer or employee of the public utility company or holding an ownership interest of no more than 7 1/2% in the public utility company, or holding an ownership interest of any size if the public entity is a municipality with a population of less than 7,500 and the public utility's rates are approved by the Illinois Commerce Commission. An elected or appointed member of the governing body of the public entity having such an interest shall be deemed not to have a prohibited interest under this Section.

(d) Notwithstanding any other provision of this Section or any other law to the contrary, until January 1, 1994, a member of the city council of a municipality with a population under 20,000 may purchase real estate from the municipality, at a price of not less than 100% of the value of the real estate as determined by a written MAI certified appraisal or by a written certified appraisal of a State certified or licensed real estate appraiser, if the purchase is approved by a unanimous vote of the city council members then holding office (except for the member desiring to purchase the real estate, who shall not vote on the question).

(e) For the purposes of this Section only, a municipal officer shall not be deemed interested if the officer is an employee of a company or owns or holds an interest of 1% or less in the municipal officer's individual name in a company, or both, that company is involved in the transaction of business with the municipality, and that company's stock is traded on a nationally recognized securities market, provided the interested member: (i) publicly discloses the fact that he or she is an employee or holds an interest of 1% or less in a company before deliberation of the proposed award of the contract; (ii) refrains from evaluating, recommending, approving, deliberating, or otherwise participating in negotiation, approval, or both, of the contract, work, or business; (iii) abstains from voting on the award of the contract though he or she shall be considered present for purposes of establishing a quorum; and (iv) the contract is approved by a majority vote of those members currently holding office.

A municipal officer shall not be deemed interested if the officer owns or holds an interest of 1% or less, not in the officer's individual name but through a mutual fund or exchange-traded fund, in a company, that company is involved in the transaction of business with the municipality, and that company's stock is traded on a nationally recognized securities market.

(f) Under either of the following circumstances, a municipal or county officer may hold a position on the board of a not-for-profit corporation that is interested in a contract, work, or



business of the municipality or county:

(1) If the municipal or county officer is appointed

by the governing body of the municipality or county to represent the interests of the municipality or county on a not-for-profit corporation's board, then the municipal or county officer may actively vote on matters involving either that board or the municipality or county, at any time, so long as the membership on the not-for-profit board is not a paid position, except that the municipal or county officer may be reimbursed by the non-for-profit board for expenses incurred as the result of membership on the non-for-profit board.

(2) If the municipal or county officer is not

appointed to the governing body of a not-for-profit corporation by the governing body of the municipality or county, then the municipal or county officer may continue to serve; however, the municipal or county officer shall abstain from voting on any proposition before the municipal or county governing body directly involving the not-for-profit corporation and, for those matters, shall not be counted as present for the purposes of a quorum of the municipal or county governing body.

(Source: P.A. 97-520, eff. 8-23-11; 98-1083, eff. 1-1-15.)

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**As Affected by Public Act 100-0201**

Effective Date: 8/18/2017

(from Ch. 102, par. 3)

**Sec. 3. Prohibited interest in contracts.**

(a) No person holding any office, either by election or appointment under the laws or Constitution of this State, may be in any manner financially interested directly in his own name or indirectly in the name of any other person, association, trust, or corporation, in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote. No such officer may represent, either as agent or otherwise, any person, association, trust, or corporation, with respect to any application or bid for any contract or work in regard to which such officer may be called upon to vote. Nor may any such officer take or receive, or offer to take or receive, either directly or indirectly, any money or other thing of value as a gift or bribe or means of influencing his vote or action in his official character. Any contract made and procured in violation hereof is void. This Section shall not apply to any person serving on an advisory panel or commission, to any director serving on a hospital district board as provided under subsection (a-5) of Section 13 of the Hospital District Law, or to any person serving as both a contractual employee and as a member of a public hospital board as provided under Article 11 of the Illinois Municipal Code in a municipality with a



population between 13,000 and 16,000 that is located in a county with a population between 50,000 and 70,000.

(b) However, any elected or appointed member of the governing body may provide materials, merchandise, property, services, or labor, subject to the following provisions under either paragraph (1) or (2):

(1) If:

- A. the contract is with a person, firm, partnership, association, corporation, or cooperative association in which such interested member of the governing body of the municipality has less than a 7 1/2% share in the ownership; and
- B. such interested member publicly discloses the nature and extent of his interest prior to or during deliberations concerning the proposed award of the contract; and
- C. such interested member abstains from voting on the award of the contract, though he shall be considered present for the purposes of establishing a quorum; and
- D. such contract is approved by a majority vote of those members presently holding office; and
- E. the contract is awarded after sealed bids to the lowest responsible bidder if the amount of the contract exceeds \$1500, or awarded without bidding if the amount of the contract is less than \$1500; and
- F. the award of the contract would not cause the aggregate amount of all such contracts so awarded to the same person, firm, association, partnership, corporation, or cooperative association in the same fiscal year to exceed \$25,000.

(2) If:

- A. the award of the contract is approved by a majority vote of the governing body of the municipality provided that any such interested member shall abstain from voting; and
- B. the amount of the contract does not exceed \$2,000; and
- C. the award of the contract would not cause the aggregate amount of all such contracts so awarded to the same person, firm, association, partnership, corporation, or cooperative association in the same fiscal year to exceed \$4,000; and



D. such interested member publicly discloses the nature and extent of his interest prior to or during deliberations concerning the proposed award of the contract; and

E. such interested member abstains from voting on the award of the contract, though he shall be considered present for the purposes of establishing a quorum.

(b-5) In addition to the above exemptions, any elected or appointed member of the governing body may provide materials, merchandise, property, services, or labor if:

A. the contract is with a person, firm, partnership, association, corporation, or cooperative association in which the interested member of the governing body of the municipality, advisory panel, or commission has less than a 1% share in the ownership; and

B. the award of the contract is approved by a majority vote of the governing body of the municipality provided that any such interested member shall abstain from voting; and

C. such interested member publicly discloses the nature and extent of his interest before or during deliberations concerning the proposed award of the contract; and

D. such interested member abstains from voting on the award of the contract, though he shall be considered present for the purposes of establishing a quorum.

(c) A contract for the procurement of public utility services by a public entity with a public utility company is not barred by this Section by one or more members of the governing body of the public entity being an officer or employee of the public utility company or holding an ownership interest of no more than 7 1/2% in the public utility company, or holding an ownership interest of any size if the public entity is a municipality with a population of less than 7,500 and the public utility's rates are approved by the Illinois Commerce Commission. An elected or appointed member of the governing body of the public entity having such an interest shall be deemed not to have a prohibited interest under this Section.

(d) Notwithstanding any other provision of this Section or any other law to the contrary, until January 1, 1994, a member of the city council of a municipality with a population under 20,000 may purchase real estate from the municipality, at a price of not less than 100% of the value of the real estate as determined by a written MAI certified appraisal or by a written certified appraisal of a State certified or licensed real estate appraiser, if the purchase is approved by a unanimous vote of the city council members then holding office (except for the member desiring to purchase the real estate, who shall not vote on the question).

(e) For the purposes of this Section only, a municipal officer shall not be deemed interested if the officer is an employee of a company or owns or holds an interest of 1% or less in the municipal officer's individual name in a company, or both, that company is involved in the



transaction of business with the municipality, and that company's stock is traded on a nationally recognized securities market, provided the interested member: (i) publicly discloses the fact that he or she is an employee or holds an interest of 1% or less in a company before deliberation of the proposed award of the contract; (ii) refrains from evaluating, recommending, approving, deliberating, or otherwise participating in negotiation, approval, or both, of the contract, work, or business; (iii) abstains from voting on the award of the contract though he or she shall be considered present for purposes of establishing a quorum; and (iv) the contract is approved by a majority vote of those members currently holding office.

A municipal officer shall not be deemed interested if the officer owns or holds an interest of 1% or less, not in the officer's individual name but through a mutual fund or exchange-traded fund, in a company, that company is involved in the transaction of business with the municipality, and that company's stock is traded on a nationally recognized securities market.

(f) Under either of the following circumstances, a municipal or county officer may hold a position on the board of a not-for-profit corporation that is interested in a contract, work, or business of the municipality or county:

(1) If the municipal or county officer is appointed by the governing body of the municipality or county to represent the interests of the municipality or county on a not-for-profit corporation's board, then the municipal or county officer may actively vote on matters involving either that board or the municipality or county, at any time, so long as the membership on the not-for-profit board is not a paid position, except that the municipal or county officer may be reimbursed by the ~~not-for-profit non-for-profit~~ board for expenses incurred as the result of membership on the ~~not-for-profit non-for-profit~~ board.

(2) If the municipal or county officer is not appointed to the governing body of a not-for-profit corporation by the governing body of the municipality or county, then the municipal or county officer may continue to serve; however, the municipal or county officer shall abstain from voting on any proposition before the municipal or county governing body directly involving the not-for-profit corporation and, for those matters, shall not be counted as present for the purposes of a quorum of the municipal or county governing body.

(Source: P.A. 97-520, eff. 8-23-11; 98-1083, eff. 1-1-15; revised 9-22-16.)

[Affected by Public Act 100-0201](#)

[Note: For additional information about this section, visit \[Public Act 100-0201\]\(#\)](#)



	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	
	255.00	475.63	2.75	121.73	1,501.74	435.50	175.83	147.90	0.00	52.30	
	466.89	172.66	267.90	615.61	830.40	18.00	734.59			250.00	
	80.95	815.71	50.26	301.41		519.80				26.55	
	32.70	269.08	190.68	1,981.58							
	488.51	359.42	390.05								
			383.90								
			167.68								
			1,060.83								
			283.93								
Annual			100.00								Grand total
Totals	\$1,324.05	\$2,092.50	\$2,897.98	\$3,020.33	\$2,332.14	\$973.30	\$910.42	\$147.90	\$0.00	\$328.85	\$14,027.47

Grand  
total  
\$14,027.47