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December 14, 2017

Mr. Daniel O'Brien
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Carlinville, IL 62626
via e-mail only
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RE: Notice of Criminal Trespass
Illinois Alluvial Regional Water Company, Inc.

Dear Dan,

Please be advised that I represent Illinois Alluvial Regional Water Company, Inc. I am writing to explain the nature of the organization and perhaps more importantly to point out the distinction between it and its constituent municipal members as regards the Open Meetings Act and the right to prohibit uninvited persons from attending and/or attempting to disrupt our meetings.

Illinois Alluvial Regional Water Company, Inc. is an Illinois Not for Profit Corporation. It currently consist of three (3) members: The City of Carlinville, the Village of Dorchester and Jersey County Rural Water Company. The City of Carlinville is a municipal corporation as is the Village of Dorchester. Jersey County Rural Water Company is a private, Not for Profit Corporation. The City of Carlinville and the Village of Dorchester are units of local government. Jersey County Rural Water Company is not.

Municipalities are subject to the Open Meetings Act. Private Not for Profit Corporations such as Illinois Alluvial Regional Water Company, Inc. and Jersey County Rural Water Company are not. **Article VII, Section 10** of the *Illinois Constitution* allows municipalities to join together and associate with private corporations in any manner not expressly prohibited by law. More specifically, the second sentence of subparagraph (a) of said Section in pertinent part provides:

“Units of local government may contract and otherwise associate with individuals, associations and corporations in any manner not prohibited by law or by ordinance”. (Emphasis Supplied)

An “association” is, *inter alia*, defined as an organization or partnership of persons or entities having a common purpose or goal. Likewise, to “associate” is to unite, combine or join together to pursue a common interest or purpose.

805 ILCS 105/103.05, *The Illinois Not For Profit Business Corporations Act*, expressly states that Not for Profit Corporations may be organized for the purpose of owning and operating water supply facilities for drinking and general domestic use on a mutual cooperative basis.

Illinois Alluvial Regional Water Company, Inc. is an “association” amongst two (2) units of local government and a private, not for profit corporation, united for a common purpose, namely the provision of potable water to its members on a mutual cooperative basis and is thus expressly authorized by the Illinois Constitution and the Illinois Not for Profit Business Corporations Act.

Article VII, Section 10, of the Illinois Constitution eliminated the effect of what is commonly referred to as “Dillon’s Rule” with respect to intergovernmental agreements and municipal associations with private corporations. Dillon’s Rule is a common law rule which limits the powers of municipal corporations to those expressly granted or incident to powers expressly granted by the General Assembly. The rule resolved any doubt as to the existence of a power against the municipality. (*Elsenu v. City of Chicago* (1929), 334 Ill. 78, 165 N.E. 129.)

Article VII, Section 10 of the Illinois Constitution was intended to encourage cooperation among units of local government and corporations so as to remove the necessity of express or implied statutory authorization for these types of cooperative ventures, because they are believed to be in the public’s best interest. (*Village of Elmwood Park v. Forest Preserve of Cook County* (1974), 21 Ill.App.3d 597, 316 N.E.2d 140.)

The drafters of the State Constitution recognized that Dillon’s Rule operated against, rather than in favor of, the public health, safety and welfare in this particular context. It essentially handcuffed local governmental units and prevented them from going forward with many worthwhile projects. Article VII, Section 10, abrogated Dillon’s Rule of strictly construing legislative grants of authority to local government units. It reversed Dillon’s Rule as a matter of public policy in recognition of the public benefit which results from such cooperation. *Connelly v. County of Clark* (1973), 16 Ill.App.3d 947, 307 N.E.2d 128 and *Village of Sherman v. Village of Williamsville*, 106 Ill.App.3d 174 (1982).

In *Village of Sherman v. Village of Williamsville*, 106 Ill.App.3d 174 (1982), the Court found, the municipalities were authorized to enter into the disputed water supply contract, despite absence of the actual express statutory grant of authority to do so. Although the *Village of Sherman, supra* involved the right of two (2) municipalities to contract with a water commission pursuant to the first sentence of Subparagraph (a) of Article VII, Section 10, the ruling applies with equal force to the second sentence as well.

In so holding, the Court relied upon the following excerpts from the Constitutional Convention which explains the advantages of allowing these types of intergovernmental agreements, combination of powers and associations, in pertinent part stating:

“It permits smaller units of local government, by combining to perform specific services or functions, to develop economies of scale with resultant cost reductions.

We think, in the long run, that vigorous intergovernmental cooperation will reduce the need for special districts and will permit the provision of services which no single unit can provide. “4 Record of Proceedings, Sixth Illinois Constitutional Convention 3421 (hereinafter cited as Proceedings).

“You will notice that the language of the intergovernmental cooperation article is based upon an affirmative grant of self-executing power *** which, in essence, means that it’s there unless it’s prohibited by the General Assembly-by general law. So it’s a provision that says, ‘You can do it unless the General Assembly says you can’t.’” 4 Proceedings 3426. (Emphasis Supplied)

This is precisely the reason why these three (3) entities decided to associate with one another to form Illinois Alluvial Regional Water Company, Inc. To achieve an economy of scale with respect to the provision of water services that any one acting alone could not accomplish.

Any suggestion that the municipality does not have the authority to join this organization is simply wrong and if necessary, will be demonstrated in a court of law. I would strongly recommend the City not take legal advice from uneducated, lay persons and “watchdog groups” who misapprehend the law and simply do not know what they are talking about.

Illinois Alluvial Regional Water Company, Inc., being a private Not for Profit Corporation, is not subject to the Open Meetings Act, notwithstanding the fact that two (2) of its members are. Likewise, the fact that those constituent members contribute money to Illinois Alluvial Regional Water Company, Inc. does not alter the result. **See *Hopf v Top Corp, Inc.*, 256 Ill. App. 3d 887, (1st Dist 1993) and *Rockford Newspapers Inc. v Northern Illinois Council on Alcoholism and Drug Dependence*, 64 Ill. App. 3d 94 (2nd Dist. 1978).**

In the past, certain members of the Carlinville City Council have violated the Open Meetings Act in furtherance of an ill-fated attempt to obstruct my client’s business. My purpose in writing is to notify you that I am hereby putting a stop to that interference. Please be advised that henceforth, no members of your city council, other than your appointed representative, will be permitted to attend our meetings. I will not permit uninvited members of your City Council from conducting an unauthorized, *sua sponte* meeting within our meeting.

To illustrate, the Open Meetings Act applies anytime a majority of a quorum of a public body is present and public business of that municipality is being discussed. The Carlinville City Council consist of eight (8) members. Hence, five (5) or more members of the municipal board constitutes a quorum. Three (3) members constitutes a majority of a quorum. As a result, if three (3) or more City Council members are present at any location and begin discussing the municipality’s own business, as distinguished from Illinois Alluvial Regional Water Company, Inc.’s business, then a meeting of the City of Carlinville is taking place and the City must comply with the Open Meetings Act.

This was recently the case when three (3) members of Carlinville City Council, (not counting the appointed representative) showed up at our meeting and began debating whether it was a good idea for Carlinville to participate in Illinois Alluvial Regional Water Company, Inc. or seek other, alternative potable water sources. On that occasion a meeting of the City of Carlinville erupted within a meeting of the Illinois Alluvial Regional Water Company, Inc., which meeting is otherwise not a public meeting.

This disrupts the normal order of business and creates problems for both Illinois Alluvial Regional Water Company, Inc. and the City of Carlinville. Illinois Alluvial Regional Water Company, Inc. meetings are not the time or place for the City of Carlinville to discuss its internal business. The issue of whether the City of Carlinville should be a member or not is an issue that should be discussed in an open meeting of the City of Carlinville, not a private meeting of Illinois Alluvial Regional Water Company, Inc.

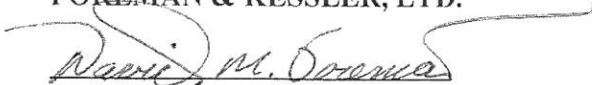
Having appointed a representative to Illinois Alluvial Regional Water Company, Inc., that decision appears to have already been made. The motive of those second guessing of that decision escapes me. Nevertheless, the point remains that our meetings are not the appropriate forum for these people to discuss that issue.

Simply put, I as the legal representative for Illinois Alluvial Regional Water Company, Inc. will not permit our meeting to be hijacked by certain members of your City Council to divert attention onto a tangent issue which is relevant only to a disgruntled faction of your board. Those matters must be vented in house, not at our meetings. Our meetings are to discuss the business of Illinois Alluvial Regional Water Company, Inc.

Consequently, please be advised that henceforth all members of your City Council, other than your appointed representative are prohibited from attending our meetings. Please consider this correspondence as Notice pursuant to **720 ILCS 5/21-1 et seq.** that said persons, including but not limited to, Randy Bilbruck, Kim Heigert and Beth Toon, shall not enter the premises where the meetings of Illinois Alluvial Regional Water Company, Inc. are taking place.

To that end, Jersey County Rural Water Company will post a Notice at the entrance to the building where said meetings will be held to notify said persons that they may not enter. Any attempted violation of this Notice will be reported to local law enforcement as a criminal trespass and will be enforced and prosecuted as such. It is unfortunate that a small group of mis-informed individuals with personal agendas seeks to stand in the way of the entire community's lawful attempts to seek a safe, stable source of potable water for many years in the future, but such is the nature of our recent political environment. I hope you can appreciate my reason for having to take such a firm stance on this issue. Thanking you, I remain,

Sincerely yours,
FOREMAN & KESSLER, LTD.


David M. Foreman

DMF/mi