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IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
EFFINGHAM COUNTY, ILLINOIS

COUNTY OF EFFINGHAM,)	
ILLINOIS,)	
)	
Plaintiff,)	
)	No. 2018-CH-30
vs.)	
)	
LAKESIDE EMS, LLC, an)	
Illinois Limited)	
Liability Company,)	
)	
Defendant.)	

MOTION FOR EMERGENCY TEMPORARY RELIEF

REPORT OF PROCEEDINGS of the hearing before The
Honorable JAMES J. EDER commencing on August 23, 2018.

APPEARANCES:

MR. BRYAN M. KIBLER
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Effingham County Courthouse
Effingham, Illinois 62401

for the Plaintiff

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for the Defendant

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1 THE COURT: 18-CH-30. County of Effingham Illinois
2 vs. Lakeside EMS, LLC. State's Attorney Mr. Kibler
3 appears for the Plaintiff.

4 MR. PHILBRICK: Charles Philbrick on behalf of the
5 Defendant Lakeside.

6 THE COURT: Morning.

7 MR. PHILBRICK: Good morning.

8 MR. KIBLER: Morning Your Honor.

9 THE COURT: All right. What's the status here?

10 MR. KIBLER: Your Honor this is before us today on a
11 Petition For Temporary Restraining Order and other
12 relief that the County originally filed a couple weeks
13 ago. It's been continued on two occasions at either
14 --once--the initial time was the agreement of the
15 parties. Last week it was because of a recusal issue
16 with Judge Siemer and got continued to today's date
17 before Your Honor.

18 THE COURT: All right. The parties are unable to
19 reach any agreement or resolution of this question?

20 MR. KIBLER: It appears we are not able to reach a
21 resolution Your Honor.

22 THE COURT: Okay. We will then proceed with the
23 hearing on the Plaintiff's Request For Temporary
24 Restraining Order. Court has reviewed the file,

1 including the Defendant's Amended Response to the
2 Motion. Mr. Kibler you may proceed.

3 MR. KIBLER: Your Honor I would rely on the
4 pleadings that were before the Court rather than go
5 through additional testimony. But quite frankly Your
6 Honor, the County has an ordinance that is in play and
7 it was attached obviously both to my Petition and to the
8 Response filed by Mr. Philbrick.

9 The County has an ordinance and it's clear from
10 the affidavits even attached to my Petition as well as
11 Mr. Philbrick's Response, it's clear that Lakeside has
12 been operating in Effingham County at a minimum, at
13 least coming into Effingham County and doing
14 inter-facility transfers. So coming from even their
15 affidavit would say, coming from their base of
16 operations in Sigel, coming to our hospital, picking up
17 a patient and taking them to another facility. So it's
18 clear they are operating in Effingham County. And so at
19 this time we're asking the Court to enter a temporary
20 restraining order prohibiting them from continuing to do
21 so.

22 As the Court notes, there is four separate
23 criteria that kind of normally have to be met. First is
24 does the County have a protectable interest and I would

1 argue it does. And the fact that it has an ordinance on
2 file that's been approved by the County Board and the
3 County does have an interest in making sure the
4 ordinance is enforced.

5 On the second element, irreparable harm. As
6 even Mr. Philbrick's Petition points out, a government
7 entity need not show irreparable harm at a temporary
8 restraining order hearing; but I would let the Court
9 know the County does have some irreparable harm that
10 could come upon it. That being that the County is
11 currently in a contract with Mission Care of Illinois
12 commonly known as Abbott Ambulances for ambulance
13 services here in Effingham County. And as part of that
14 agreement, Effingham County risks being sued by Abbott
15 Ambulances for breach of contract if we do not try to
16 protect and enforce our ordinance.

17 Then on the third element Your Honor, the
18 remedy is inadequate at law. Besides coming to Your
19 Honor, the only other option the County would have would
20 be to file an actual ordinance violation where we would
21 seek a thousand dollar fine for each violation committed
22 by Lakeside Ambulances.

23 However, the ordinance violation, you know,
24 they are quasi criminal quasi civil. They take a while

1 to litigate. In the meantime if we don't get a
2 restraining order from Your Honor, Lakeside will
3 continue to violate our ordinance, continue to do
4 inter-facility transfers here from within the County and
5 do other operations within the County.

6 Then on the fourth element where I think the
7 arguments really are going to pend are going to be the
8 likelihood on the merits. Mr. Philbrick in his argument
9 and his pleadings essentially attaches or attacks two
10 things of our ordinance.

11 First is that our ordinance is unclear. Well
12 Your Honor if you read the clear language of the
13 ordinance, it's clear the ordinance indicates that a
14 ambulance service, a ground ambulance service cannot do
15 transfers in Effingham County, cannot base itself in
16 Effingham County, can't do other basic operations such
17 as advertise in Effingham County without those letters
18 of authorization from the County Board. Lakeside does
19 not have authorization from the County Board thus it
20 can't do transfers, it can't base itself in Effingham
21 and so the ordinance is clear.

22 Then the second issue that really is a play is
23 whether the County is allowed to restrict Lakeside from
24 operating on at least those inter-facility transfers. I

1 would note Your Honor the plain language of the statute
2 that's in question says the County Board can limit.

3 THE COURT: What statute are you referring to?

4 MR. KIBLER: A 55 ILCS 5/5-1054 subsection C
5 paragraph 3. Subsection C starts out, if the County
6 Board passes such an ordinance the board may. And then
7 the third provision of that statute says, limit the
8 number of ambulance services.

9 It's pretty clear the statute gives the County
10 Board authority when they contract either with a private
11 entity such as Abbott or if the County, and some
12 counties do this, establish their own county wide
13 ambulance service run and operated by the actual county
14 government. The County is allowed to restrict the
15 number of ambulance services. That's where those
16 letters of authorization come into play.

17 Now why would a county be allowed to do this?
18 It's simple Your Honor. Ambulance companies make their
19 monies off of these inter-facilities transfers. So if a
20 county either runs its own ambulance operation or
21 contracts with another entity to do emergency ambulance
22 services, it would make sense then to allow the county
23 to limit the total number of ambulance services because
24 it's not feasible to really operate an ambulance service

1 unless you are able also to do those inter-facilities
2 transfers which seems to be what Lakeside is arguing it
3 should be allowed to do.

4 So clear reading of the statute shows that
5 Lakeside cannot be operating and cannot be doing these
6 transfers because they don't have authorization from the
7 County and the County Code clearly allows the County
8 Board to limit the number of ambulance services.

9 So on this fourth prong, likelihood on the
10 merits Your Honor, the County is more likely than not to
11 succeed on the merits of the case, if this were to
12 proceed to a--go through the whole proceedings. Also...

13 THE COURT: Do you have a copy of 1054? I thought
14 you were referring to 1053. Is there...

15 MR. PHILBRICK: It's a matter of misspeaking. It's
16 1053.

17 MR. KIBLER: I am sorry Judge.

18 THE COURT: You are still referring to 1053?

19 MR. KIBLER: I am Your Honor. It's one of those
20 things where I'm looking at the County Code from the
21 hard book and I misstated the numbers when I was looking
22 at how it was paginated.

23 THE COURT: All right. Go on.

24 MR. KIBLER: And so and I would also note the

1 statute also allows the County Board to establish
2 necessary regulations. That's another reason for these
3 letters of authorization. I would note that the County
4 does have a basic standard of care or standard of care
5 that any ambulance service would have to provide or that
6 operates in Effingham County. And that is the County
7 Board is allowed to do that under the statute allowing
8 it to establish all necessary regulations.

9 For those reasons Your Honor, I would ask that
10 the temporary restraining order be entered and that
11 Lakeside is clearly operating in violation of the
12 County's ordinance.

13 THE COURT: All right. Thank you. Counsel.

14 MR. PHILBRICK: Thank you Your Honor. Charles
15 Philbrick on behalf of Lakeside. I am a little
16 unfamiliar with the courtroom. Is it okay if I stand to
17 present to the Court?

18 THE COURT: Whatever you feel most comfortable.

19 MR. PHILBRICK: I appreciate that so much. Counsel
20 talked about the general elements of seeking a TRO, but
21 didn't speak to one and it's usually the last one we
22 talk about, which is a balancing of the equities.

23 Before a Court goes to extraordinary measures
24 to exercise its equitable power to impose an injunction,

1 which is an extraordinary remedy, it needs to balance
2 the equities. And so to do that we really have to have
3 an understanding about what is it that ambulances do.
4 What is it that Lakeside does? They take people who
5 need medical treatment from one place to another.

6 And in the ordinance in question, and Your
7 Honor I had submitted last time I was here just a copy
8 of some of the pertinent pieces of legislation. I hope
9 you have it handy. Starting with the ordinance in
10 question. Ordinance number 17-76.

11 THE COURT: What tab?

12 MR. PHILBRICK: Tab one.

13 THE COURT: Yes, I have it.

14 MR. PHILBRICK: It has a definition of the term
15 emergency ambulance service. And that's defined. I am
16 not going to read it for you, but the point is, any time
17 an ambulance is picking someone up in the world like at
18 a home or a car accident scene or where the fire is and
19 taking them to a hospital, your typical 911
20 circumstance, that's emergency ambulance service. And
21 within the County's definition, specifically excluded
22 from that is something called inter-facility transfers.
23 That's where the ambulance is picking someone up at St.
24 Anthony's and taking them to somewhere else. Another

1 medical facility. Those are separate and distinct
2 services. They don't overlap. They are terms of art.
3 The County didn't make that up. That's how the medical
4 community views it. That's how the regulatory community
5 views it and that's how the Legislature views it.

6 Emergency ambulance service is distinct from
7 inter-facility transfer. The acuteness or the urgency
8 doesn't matter. Under both scenarios the ambulance may
9 be lights on siren going or not, but it's still either
10 emergency ambulance service or it's inter-facility
11 transfer. Like I said they didn't make that up.

12 But what we do know for sure is normally the
13 lights are on and the siren is going because it's an
14 emergency. People need medical care. They need it
15 right away. So when there is not adequate care, people
16 can die. I am not exaggerating.

17 THE COURT: Is there a statutory definition of
18 emergency ambulance service?

19 MR. PHILBRICK: I have not found it. But the next
20 statute in question that we're so concerned about, the
21 one that the County looks to as their authorizing
22 statute 1053 is titled terms and conditions of emergency
23 ambulance service. It does not discuss in any way
24 inter-facility transfer. I am getting a little ahead of

1 myself though.

2 What's the--what's the County's concern here?
3 What's the equity? What's their harm in the balancing
4 of the equity? Well they just told us they might get
5 sued by the company that they have the contract with to
6 perform emergency ambulance service. That's precisely
7 what they allege in their Complaint and in their motion.
8 They do not assert that their contract with Abbott is to
9 provide inter-facility transfer. But they are concerned
10 they might be sued for not enforcing the ordinance.
11 That's a non-issue. They are immune. A County cannot
12 be sued for failing to enforce one of its ordinances.
13 That's a statute in the Tort Immunities Act 745 ILCS 10
14 /2-103.

15 Now I will concede it's possible that the
16 contract between Abbott and the County has a provision
17 that says, County you contractually agree to enforce
18 this ordinance. But they have not submitted the
19 contract to you, so we don't have that in front of us.
20 All we know about that contract is what they allege,
21 which it's limited to emergency ambulance service. So
22 there's no risk of them being sued by Abbott. One,
23 because they are immune; two, because all my client
24 Lakeside is accused of is performing inter-facility

1 transfer. So how could Abbott be harmed by Lakeside's
2 activity? They couldn't.

3 And then thirdly there are at paragraph 20--10
4 of Mr. Estes' affidavit, 22 other ambulance services who
5 routinely bring patients in to Effingham County to St.
6 Anthony's or take them from St. Anthony's somewhere
7 else. County... There is no lawsuits by Abbott
8 concerning their activities. One of them that there is
9 a Rural Med. Very active in this county. Doesn't have
10 this letter of authorization. There's no lawsuit. My
11 clients only been in operation since July of 2016--2018.
12 Rural Med has been around for a long time. There is no
13 lawsuit concerning Rural Med, so why would there be a
14 lawsuit concerning Lakeside? There can't be a lawsuit.
15 So there is no harm to the County whatsoever.

16 There's clearly harm to my client. It's a
17 fully licensed qualified ambulance service according to
18 the Illinois Department of Public Health. They are
19 allowed to do exactly what they are trained and skilled
20 to do. They have invested a lot of time and money to
21 provide this vital public service and now they are being
22 closed out. So they are getting harmed clearly.

23 And then fully and most importantly, the public
24 is going to be harmed by taking out a vital resource,

1 which is, an ambulance.

2 And our point on that is what happened on
3 August 15th, a week and a half ago. If the County had
4 had its way, there would have been an injunction in
5 place at that time and Lakeside couldn't operate. But
6 that wasn't the case. The injunction had not been
7 imposed.

8 And at 6:30 at night, St. Anthony's calls
9 Lakeside and says we have someone with a stat heart
10 attack and they need to get up to Springfield where they
11 get health care that they need that can't be given here
12 and through emergency and the closest ambulance is five
13 hours away. Where's yours? Thirty minutes away.
14 Lakeside comes, picks up the patient, takes them to
15 Springfield, administers medical care along the way.
16 That person's alive. If there was an injunction in
17 place at that time, that patient would likely be dead.
18 I am not exaggerating.

19 We are talking about taking an ambulance, fully
20 licensed qualified ambulance out of operation. And if
21 you look at Exhibit E to Mr. Estes' affidavit. He lists
22 in that affidavit that exhibit--all of Lakeside's
23 assignments since July 16th when they started operating
24 that concern Effingham County. And what you'll see is

1 time and time again the other ambulances are two, three,
2 four hours away. And they are typically either Abbott
3 or Rural Med ambulances.

4 Now that's not an indictment of those ambulance
5 companies. Not at all. They are where they need to be
6 because they are needed. It just so happens that they
7 are so far away that they are not in a position to help
8 at St. Anthony's at that given moment. So you will see
9 when you look over that data, particularly after
10 midnight there is just not enough ambulances to cover
11 the need.

12 So when we weigh the equities here we take into
13 consideration the impact on the general public. We're
14 literally talking about creating a situation where
15 people could die unnecessarily. I know that sounds
16 extreme, but it's not an exaggeration, because what we
17 are talking about here are ambulance services. They do
18 life and death work all the time.

19 So I submit to Your Honor that regardless of
20 all the legal arguments that concern these statutes and
21 the ordinance, that fact alone, that balancing of the
22 equity alone calls for the denial of this motion. It's
23 not worth it to put people at that kind of risk so that
24 the County can essentially license a new ambulance

1 service.

2 Now does the County have a protectable
3 interest? We submit to you that it does not. We submit
4 to you that section 1053, the enabling statute here, is
5 limited on its terms to the provision of inter--excuse
6 me, emergency ambulance service and that's all. Title
7 of the act--excuse me, the title of the statute. The
8 subsection A concerns the public policy behind the
9 statute. All three public policies specifically
10 reference the provision and need for emergency ambulance
11 service and that's all.

12 The end of the statute, I believe it's
13 subsection D, makes it clear that a county can't be
14 liable if it fails to provide emergency ambulance
15 service. Within the statute, I will submit that
16 subsection C about all the things that the County could
17 do in regard to emergency ambulance service is vague.
18 It could be reasonably interpreted as being broader than
19 regulating just emergency ambulance service. That's
20 possible. But when you have a statute and the scope of
21 it is unclear, the first rule of statutory construction
22 is to read it in light of other statutes. And this
23 particular statute makes reference to section 5-1028 of
24 the County Code. Makes reference to it twice. And that

1 is a specific taxing levy authority and it is by its own
2 terms limited to allowing the County to tax for payment
3 of emergency ambulance service. Nothing else.

4 As we cite in our Brief the law in Illinois has
5 been long-standing and perfectly clear that when there
6 is a statute that permits a specific levy for a specific
7 purpose it can't be expanded to be taxing for anything
8 beyond that specific purpose.

9 So when you read 1053 in conjunction with
10 section 1028, which creates the taxing authority, it's
11 clear that 1053 is limited to emergency ambulance
12 service.

13 Now you might say no, I am not so sure about
14 that. There is another key statute that has to be
15 considered here. It's tab three in the packet that I
16 provided. It's another statute from the Municipal Code,
17 excuse me the County Code and that is 1058.

18 1058 case says, I'll read it. Ambulances. In
19 counties of 1 million or more inhabitants, that would be
20 Cook County only, a County Board may license and
21 regulate ambulances and ambulance drivers, attendants
22 and equipment. So the clear import of that is counties
23 with less than a million inhabitants cannot license or
24 regulate ambulances, ambulance drivers, attendants and

1 equipment.

2 Well according to the County, Effingham County,
3 1053 gives them carte blanche authority to regulate and
4 license ambulances, ambulance drivers, ambulance
5 attendants, ambulance equipment. Can't be. We've got a
6 statute that says they cannot.

7 So how do we reconcile 1053 with 1085? And I
8 submit to you there is only one way. And that's to give
9 effect to the limiting term, emergency ambulance
10 service. 1053 permits counties to regulate emergency
11 ambulance service only.

12 If you read it the way the County wants it
13 read, then section 1085 becomes meaningless. And that's
14 an improper interpretation of the statute. Both of
15 these sections were legislated as part of the same
16 public bill. They put into place at the same time by
17 the same Legislature. They could not have meant one to
18 mean nothing.

19 THE COURT: 1053 and 1085.

20 MR. PHILBRICK: That's correct Your Honor. And what
21 the...

22 THE COURT: What about 1028?

23 MR. PHILBRICK: 1028 gives the County the authority
24 to issue a specific levy for paying for emergency

1 ambulance services only.

2 THE COURT: Is that enacted at the same time?

3 MR. PHILBRICK: I believe it was Your Honor. And I
4 think if you look at the bottom. I am not sure if I
5 gave you a copy.

6 THE COURT: I am not sure you did. That's the one I
7 am missing. I reviewed the others.

8 MR. PHILBRICK: I don't have it handy so I can't say
9 categorically, but my recollection is yes, they were all
10 PA 86-962, which I figured out was House Bill 10--excuse
11 me. House bill 0312. I was trying to look into the
12 legislative history. I was not successful. I am not
13 saying there isn't any, but I was not successful in
14 finding a silver bullet if you will or of any
15 persuasion.

16 So you got to harmonize those statutes. The
17 only way to do it is to limit 1053 to the provision of
18 emergency ambulance service. My client is not doing
19 that. So we're going to ask you in light of that, you
20 agree with that interpretation, we think you must, then
21 not only should you deny the motion, you should dismiss
22 this Complaint, because the County has no authority to
23 license or regulate ambulance services when they are
24 providing inter-facility transfer.

1 Now even if they did, their attempt to do so is
2 invalid. When we look at the ordinance itself and
3 that's tab one of the packet I gave you. They are
4 focusing on exclusively section 7. And they say that
5 that essentially gives them the power to issue a letter
6 of authorization to any ambulance service who is
7 bringing patients in or taking them out of Effingham
8 County.

9 And I point out that it's not limited to
10 ambulance services that are based in Effingham County.
11 That's one potential criteria, but it's broader than
12 that, because there is that conjunction "or" that's used
13 in there. Disjunction I should say.

14 So we submit in our papers that that provision
15 is invalid, it's void for vagueness and it constitutes
16 an improper exercise of corporate authority under
17 section 1004 of the County Code. Void for vagueness. A
18 statute is void for vagueness if it authorizes or even
19 encourages arbitrary and discriminatory enforcement.

20 Here we have an ordinance that is attempting to
21 license ambulances. It sets forth no criteria as to
22 what the ambulance service would have to do to achieve
23 such an authorization and it contains no description of
24 what the County is supposed to consider when determining

1 whether to issue such a letter of authorization.

2 Let's just be clear. A letter of authorization
3 is nothing more than a license. So right on its face
4 we're looking at something that is in direct violation
5 of section 1085 of the County Code.

6 Now... So it's vague because there is no
7 criteria, but also we know not only on its face, but
8 also in terms of how it's being applied, that it is
9 being applied in a arbitrary and discriminatory manner.
10 We know that there are 22 other providers who are coming
11 in to Effingham County and delivering patients and/or
12 picking them up at St. Anthony's and taking them out.
13 None of them have letters of authorization. And when I
14 say none, the 22 listed at paragraph 10 of Mr. Estes'
15 affidavit. That does not include Abbott. I believe
16 Abbott does have such a letter of authorization signed
17 by three members of the Board.

18 Now the County is not attempting to enforce
19 this--this ordinance as against those 22 other ambulance
20 services. And my client's only been in business since
21 July 16th. They have been in business for a long time.
22 We know perfectly well that Rural Med has been bringing
23 patients in and out of St. Anthony's for quite awhile.
24 They don't have such a letter of authorization. And the

1 county is not doing anything about it. That is clearly
2 discriminatory enforcement against my client. So it's
3 vague, excuse me, it's void as to vagueness.

4 Secondly, our second attack of subsection 7 is
5 that it's invalid exercise of corporate power. Under
6 section 5-1004 of the County Code, counties can only act
7 through their board. The whole board at a public
8 meeting.

9 But what does subsection 7 attempt to do? It
10 attempts to have the Board issue letters of
11 authorization by three specific board members for
12 whatever reason they may choose. That is an invalid
13 exercise of corporate authority. That subsection is
14 void. It's unenforceable. And it is the basis of their
15 Petition and their Complaint and so therefore the motion
16 should be denied.

17 Last thing Your Honor just want to touch on
18 because it's not detailed in the papers. The relief
19 sought here is extraordinary. Extraordinarily broad.
20 They want to prevent my client from bringing people from
21 outside the County into the County. But on the terms of
22 their ordinance, subsection 6 says the provisions of
23 paragraph 4 shall not apply to transporting the patient
24 from outside the County of Effingham to a point within

1 the County of Effingham. But they want to stop my
2 client from doing that.

3 Now you would say well wait a second. That
4 pertains to paragraph 4 not paragraph 7. And a valid
5 point, but when we look at paragraph 4, paragraph 4 is
6 the section that says no person or entity other than the
7 contractor, that would be Abbott, and ambulance services
8 having a mutual aid agreement with the contractor, shall
9 operate or cause to be operated a vehicle for emergency
10 ground ambulance purposes.

11 Well what the heck is that? That's not defined
12 in the ordinance here. The defined term is emergency
13 ambulance services. They put this word "ground" in.
14 Either they mean that emergency ambulance services or
15 they are being vague so that we're not exactly sure what
16 they are talking about.

17 But ultimately the point is, doing that sort of
18 thing, inter-facility transfer, is not a problem if
19 you're bringing somebody in from another county.

20 They are also asking to prevent my client from
21 advertising. My client is based in Shelby County; is
22 that right? How does one not... They are licensed.
23 They are fully qualified by the State of Illinois. They
24 are providing a vital public service, but they can't

1 somehow advertise in Shelby County. That's an
2 impossibility. A lot of advertising is on the internet.
3 How does one not advertise in Effingham County when you
4 can in every other county around this particular county
5 and all of the southern region of Illinois? That's just
6 complete overreach and I think it underscores the fact
7 that missing in all of this is the question, answer to
8 the question why? Why is the County doing this? Why
9 does the County want to take out of service a fully
10 licensed and qualified ambulance from operating and
11 helping the community, this particular community? There
12 is no answer for that in these papers.

13 But as we stated in the beginning, when you
14 balance the equities here, clearly this motion needs to
15 be denied. And when you analyze the statutes that are
16 in play here, clearly the County does not have carte
17 blanche authority to license and regulate ambulances.
18 Particularly when it comes to the provision of
19 inter-facility transfer. They can only regulate
20 ambulances providing emergency ambulance service. They
21 have done that with Abbott, but they can't stop
22 licensed, qualified ambulance companies providing--to
23 provide inter-facility transfer. And so we ask that you
24 deny this motion and you dismiss this Complaint with

1 prejudice. Thank you.

2 THE COURT: Mr. Kibler any rebuttal argument?

3 MR. KIBLER: Yes, Your Honor. Mr. Philbrick brings
4 up continually the balancing of the equities.
5 Essentially he is saying, as I understand it, you really
6 can never put a temporary retraining order on any
7 ambulance service because they might be needed later on
8 to help the community. So the way he's argued it or
9 phrased it, this Court would never be in a position to
10 restrict service such as Lakeside from doing
11 inter-facilities transfers, but that would go against
12 what the provisions of this statute indicate that the
13 County can establish a monopoly and/or set up its own
14 publicly owned county operated ambulance service and
15 then restrict others from doing ground ambulance
16 services.

17 He brought up continually the issue of these 22
18 other ambulance services and he's arguing that his
19 clients are being specifically discriminated against. I
20 would point out a couple things here Your Honor and
21 we're kinda going off the affidavits or outside of the
22 affidavits that are on file here Your Honor. But I
23 would note that if I were going down the interstate, you
24 know, going 90 miles an hour, someone else was going 75

1 and the cop pulls me over, I can't sit there and say
2 well what about those other cars that were going 75?
3 How come you didn't pull them over?

4 And what I am getting at and he kept asking
5 why, why, why my guys? And this is kind of outside the
6 affidavit, but I can give the Court a little bit of
7 understanding.

8 So before Court, you know, I was directed to do
9 this by the County Board chairman. I ultimately go,
10 well what was the big issue that really caused this to
11 be pushed? And it comes back to this advertising issue.
12 These other ambulance services such as Rural Med were
13 coming in when asked to by a patient to do a transfer.
14 That's fine.

15 But what really got the County Board worked up
16 was the fact that there was essentially a gorilla
17 marketing type campaign where Lakeside was leaving their
18 literature all over the hospital. Essentially
19 advertising directly to the patients that are located
20 inside our hospital inside our County. That set them
21 apart from everyone else. That these guys were
22 aggressively marketing the actual patients who were in
23 the hospital, unlike the other medical ambulance
24 providers.

1 THE COURT: What significance is there to that?

2 MR. KIBLER: Well in the sense of when one is--they
3 were essentially blatantly trying to advertise and
4 operate in the county versus the others that were just
5 coming in every once in awhile.

6 And then you have someone you're in contract
7 with Abbott Ambulances seeing that someone else is
8 advertising and actively trying to get into this market
9 of these hospital transfers by operating in Effingham
10 County. And yet you have, you the County have a
11 contract with Abbott Ambulances. That's kind of our
12 reason to try to enforce this ordinance Your Honor.

13 When you have a group like Lakeside that's
14 being much more aggressive than the others and that's
15 why we--that's why they are involved in this litigation
16 and not the others.

17 MR. PHILBRICK: May I speak to that?

18 THE COURT: Not until he's finished.

19 MR. PHILBRICK: I apologize. I apologize.

20 MR. KIBLER: And I would also note that Mr.--that
21 the language of the statute is clear. The County may
22 limit the number of ambulance services. It is a very
23 clear direct allowance. A county can do this. And
24 Mr. Philbrick used it and was very, very I mean very

1 ingenuitive I guess would be the term I am using. Very
2 elaborate kind of unique argument. He was using
3 statutory interpretation to essentially muddle up the
4 clear language of the statute that allows the County to
5 limit the number of ambulance services. And that's
6 where these letters of authorizations come in. The
7 County can do this. We're asking that the Court allow
8 us to enforce our own ordinance.

9 The other note I have here Your Honor is
10 Mr. Philbrick talked about how the County--and he
11 concedes that we don't have to show irreparable harm in
12 his motion, but he argued it to you during his argument.
13 Again the County does haven't to show irreparable harm
14 to enforce its own ordinance. That's what I would say
15 Your Honor.

16 THE COURT: Thank you. Mr. Philbrick.

17 MR. PHILBRICK: Thank you Your Honor. With regard
18 to advertising, that's really fascinating because it's
19 got nothing to do with the provision of ambulance
20 services. Let me put it another way and more
21 importantly. There is literally nothing in this record
22 to suggest that Lakeside is providing negligent or
23 inefficient or unsafe ambulance inter-facility
24 transfers. Nothing. And that's the key point.

1 Certainly you could enjoin an ambulance service if it
2 was reckless, if it wasn't complying with health and
3 safety standards set by the Department of Health. In
4 that situation yes, because the ambulance service would
5 be a threat to the general public. But there is
6 literally no fact before you of, allegation or
7 otherwise, that this company is anything other than
8 fully licensed and qualified and does an excellent job.
9 And so therefore taking them out of play actually hurts
10 the public interest. It doesn't help it.

11 Now marketing. Really interesting if you look
12 at Mr. Estes' affidavit. He provide you with a couple
13 of photographs of the dispatch sheets. In Exhibits D
14 and the one before D is C, right? Those photographs
15 show and what those dispatch sheets demonstrate is that
16 the patient picks the ambulance. And so a dispatch
17 sheet is handed to a patient and they say and it says
18 Abbott is two hours away; Rural Med is three hours away;
19 Lakeside is whatever it is away. You can change the
20 numbers of the time. But it's the patient that says, I
21 want Abbott or I want Lakeside. So of course ambulance
22 services would market in a--perfectly legal enterprise,
23 perfectly legal advertisements. The County has no say
24 about how an ambulance service advertises.

1 And now this obviously the fact that this is
2 their beef all goes back to this contract with Abbott.
3 Well it's not before you. They didn't put it before
4 you. If they had a legitimate concern about Lakeside
5 doing something that poses a financial risk to the
6 County by virtue of its contractual obligations, they
7 should have put that in front of you, but they didn't.
8 All they did was describe it and all they said was it's
9 an exclusive contract to provide emergency ambulance
10 service. Quote unquote.

11 There's no contract with the County having
12 anything to do with the provision of inter-facility
13 transfer. And that is an otherwise fully lawful
14 enterprise. It's a laudable enterprise. And under
15 section 1085 of the County Code, this County cannot
16 license or regulate. Thank you.

17 THE COURT: Mr. Philbrick is the Court required to
18 address the balancing of the equities if it in
19 --regardless of its ruling with regard to the other
20 issues?

21 MR. PHILBRICK: Yes, Your Honor. Any time a Court
22 exercises its equitable powers to issue an injunction
23 there needs to be a balancing of the equities.

24 THE COURT: But if the Court were to deny the

1 request for the TRO based on likely to succeed or
2 protectable interest, does the Court reach the issue of
3 balancing the equities?

4 MR. PHILBRICK: It would need not.

5 THE COURT: Thank you. Court has carefully
6 considered the arguments of counsel, the affidavit on
7 file as well as the pleadings and the applicable
8 statutes as well as the ordinances in question.

9 Court finds that there is a substantial
10 question as to whether the Plaintiff Effingham County
11 has a protectable interest. The Court also finds that
12 there is a substantial question as to whether the
13 Plaintiff Effingham County is likely to succeed on the
14 merits and accordingly the Motion For Temporary
15 Retraining Order as it is labeled Motion For Emergency
16 Temporary Relief is denied, which means that we will be
17 proceeding to further hearing in this case.

18 The Court is particularly concerned with regard
19 to the interaction of the applicable statutes and the
20 Plaintiff's ordinances. And Court would expect that on,
21 some effort be made by both sides to delve into the
22 statutory history and--with regard to the passage of
23 those acts.

24 And the question here largely is, does the

1 County have authority to license and regulate ambulance
2 services generally or is that authority restricted to
3 emergency ambulance service? And then is it the
4 definition of emergency ambulance service that the
5 County uses in its ordinance that controls or is that
6 term, which apparently is undefined by statute, does it
7 bear some other type of meaning or definition?

8 And for those reasons the Court finds that
9 there is a substantial question with regard to
10 protectable interest and the likeliness to succeed based
11 on the information provided about the Defendant by
12 affidavit. The Court sees no apparent or immediate
13 danger to allowing the Defendant to continue to operate
14 as it has.

15 Mr. Philbrick you submitted a proposed order.
16 I am striking paragraph 3 of that Order and I'm also
17 striking paragraph 5 of that Order. The only ruling
18 that the Court is required to make here is with regard
19 to whether or not the Plaintiff's request for a
20 temporary restraining order should be granted, not to
21 render a ruling giving the Defendant permission to do
22 anything. So I am also going to be striking paragraph
23 5. And renumbering paragraph 4 as paragraph 3. Mr.
24 Kibler do you have a copy of this proposed?

1 MR. KIBLER: I think it might... I don't have it.
2 Might have been e-mailed by his assistant.

3 THE COURT: Just using it as the written order that
4 I am going to use today and I have marked through it and
5 signed this one. You can get a copy once it's entered
6 here.

7 MR. KIBLER: Yes, Your Honor.

8 THE COURT: Now the next question is, how are you
9 wanting to proceed? I might suggest now that you know
10 the Court's ruling with regard to the TRO that we
11 schedule the case for some type of status. We can do
12 that by telephone conference to save Mr. Philbrick the
13 need to travel all the way to Effingham County. Come up
14 with a game plan in terms of how we're going to proceed,
15 whether the County is going to be seeking a hearing with
16 regard to preliminary injunction; whether we are just
17 going to go straight to the ultimate hearing on whether
18 permanent injunction should be entered; whether any
19 discovery needs to be taken; what kind of briefing
20 schedule you would want to have with regard to the legal
21 issues. So I will give you some time to think that
22 through. Talk it over with your respective clients as
23 well as each other beforehand. How much time do you
24 each of you suggest we give before we have that

1 conference? Thirty days appropriate?

2 MR. PHILBRICK: I think that will be fine. I note
3 that the Complaint was filed on August 14. So I was
4 going to suggest some time after we're at issue in terms
5 of the pleadings.

6 THE COURT: All right. So let's--why don't we
7 determine that.

8 MR. PHILBRICK: The responsive pleading would be due
9 28 days from the 14th. So that's...

10 THE COURT: September 11th.

11 MR. PHILBRICK: I hate to schedule anything on that
12 day.

13 THE COURT: No, I am not scheduling that day, but
14 that's when your pleading is due. Let's get that
15 established. Can you have your responsive pleading on
16 file to the Complaint by September 11th?

17 MR. PHILBRICK: Yes, Your Honor. That will be fine.

18 THE COURT: All right. I can do a telephone
19 conference perhaps the following week.

20 MR. PHILBRICK: That will be fine Your Honor. The
21 State's Attorney is busier than I am. Wait to hear from
22 them.

23 MR. KIBLER: That will be fine Judge. Whatever
24 works for your calendar and Mr. Philbrick.

1 THE COURT: I am taking a look here. Do a telephone
2 conference at 8:30 on September 19 or September 26. 26
3 would give you a little more time after having received
4 their responsive pleading.

5 MR. KIBLER: That's fine. That will work.

6 THE COURT: All right. September 26th then at 8:30.
7 Anything else in the matter then today?

8 MR. KIBLER: I can't think of anything sir, no.

9 MR. PHILBRICK: Thank you Your Honor.

10 THE COURT: Thank you.

11 (End of proceedings.)

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IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
EFFINGHAM COUNTY, ILLINOIS

CERTIFICATE OF REPORTER

I, Penny Jo White, CSR #084-003013, a Certified Shorthand Reporter for the Circuit Court of Effingham County, Fourth Judicial Circuit of Illinois, reported in machine shorthand the proceedings had on the hearing in the above-entitled cause and transcribed the same by Computer Aided Transcription, which I hereby certify to be a true and accurate transcript of the proceedings had before Honorable JAMES J. EDER.



Certified Shorthand Reporter

Dated this 30th day
of August 2018.