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Edgar County Board Chairman Jeff Voigt
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Dear Mr. Voigt,

This communication is to inform you of certain actions being contemplated by your Emergency Telephone System Board (ETSB) that are inconsistent with current law as it relates to their limited powers of employment.

As I understand the current situation, your ETSB Chairman Troy Eades has placed on their meeting agenda an action item pertaining to a contract for the single staff member employed by the board. Enclosed you will find our written legal opinion pertaining to the limited powers of the ETSB as it relates to the hiring of staff.

Please be advised I am informing you as to why such action is inappropriate for the purpose of stopping the action being contemplated in order to avoid costly litigation that the County may face on this matter.

The County is the governing authority for ETSB and is the governmental entity and its members that would be named in any lawsuit pertaining to your ETSB.

I have copied your State's Attorney and Chairman of the ETSB of this communication and ask that you consult with your legal counsel on this matter.

If you concur with the legal foundation presented I would ask that you take appropriate steps to stop the action being contemplated. The very power to take such action was provided in a recent legislative amendment to the ETSB statute that resulted from past actions of your ETSB and their hired staff member. Specifically, the corporate authorities of a county or municipality may, by a vote of the majority of the members elected, remove an Emergency Telephone System Board member for misconduct, official misconduct, or neglect of office. (50 ILCS 750/15.4)

I am of the opinion that any ETSB member that takes action that they are informed is inconsistent with law is misconduct and grounds for their removal from the ETSB.

Primarily, your ETSB cannot tie the hands of the future Board with this proposed employment contract. This action clearly has the appearance of impropriety and cronyism. There is no rational basis to extend a multi year contract for this individual. This individual is not so valuable that the ETSB has to entice her to continue her employment with this multi-year contract. This proposed contract offers no benefit to the ETSB and only serves to secure the future employment of the individual in question.

If you have any questions on this matter or wish to discuss further please feel free to give me a call.

Sincerely,
Denise M. Ambroziak

Cc: Mark Isafe – Edgar County State’s Attorney
Cc: Troy Eades – Edgar County Emergency Telephone System Board Chairman

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The question before us is whether the County Emergency Telephone System Board (hereafter ETSB) has the statutory authority to enter into a contract for full-time at-will employment with a citizen to be a Director/Coordinator who manages the County ETS system at the will of the ETSB, commonly referred to as the 911 Board. We conclude that the ETSB does not have the statutory authority.

Applying statutory construction, the courts have consistently held that statutes must be read narrowly and plainly, which is where we will begin our analysis. *See generally People v. Ramirez*, 214 Ill. 2d 176, 179 (2005); *People ex rel. Ill. Dep't of Corr. v. Hawkins*, 952 N.E.2d 624, 631 (Ill. 2011).

The first question that must be answered is, where in the statute does it give an ETSB the power to enter into a contract for employment? The statute that provides the specific powers to the ETSB are limited as it relates to employment and can be found in 50 ILCS 750/15.4, specifically item (5) Hiring any staff necessary for the implementation or upgrade of the system.

The plain language of the statute gives the Board the power to hire any staff necessary for the implementation or upgrade of the system. We understand some have viewed the term “hiring” to be broad in nature and would include the hiring to be by contract rather than as an at-will employee. We disagree with such a position as statutory construction requires a narrow interpretation of the statute and the application of the plain language of the statute.

A basic review would be to apply Dillon’s Rule, which Illinois adopted and codified into the 1970 Illinois Constitution. Ill. Const. art. VII, § 7.

Dillon's rule, states that a municipality may exercise only those powers expressly conferred by statute, those powers necessarily or fairly implied by the expressed power in the statute, and those indispensable powers essential and not merely convenient to the effectuation of the purposes of the corporation. *See Pesticide Pub. Policy Found. v. Vill. of Wauconda*, 117 Ill. 2d 107, 112 (1987).

The first prong of Dillon's Rule must be applied in relation to the ETSB powers as it relates to hiring staff. There is no power "expressly" conferred by statute to enter into contracts for the implementation or upgrade of the system.

The second prong of Dillon's Rule points to powers necessarily or fairly implied by the expressed power in the statute. Considering there is no expressed power to contract, and that such a contract is not necessarily or even fairly implied in the plain reading of the statute, the second prong is not met.

The final prong deals with indispensable powers essential and not merely convenient to the effectuation of the purposes of the corporation. It is clear that no such power to enter into contracts for employment is provided, nor is such a contract an indispensable power essential to the purpose of the ETSB. This is concluded from the fact that the past history points to the position in question being performed by an employee bound by the County Personnel Policy.

The next analysis that must be performed is linked to powers and duties of the board that were defined and established in the original formation of the ETSB. Under 50 ILCS 750/15.4(b), it states:

(b) The powers and duties of the board shall be defined by ordinance of the municipality or county, or by intergovernmental agreement in the case of a joint board. The powers and duties shall include, but need not be limited to the following:

A review of the County Resolution reportedly adopted 12/4/91 appears to be even more restrictive than the state statute as it relates to the hiring of personnel by the ETSB.

(5) Hiring, on a temporary basis, any staff necessary for the implementation or upgrade of the system.

See Exhibit 1. The County resolution makes no mention of contracting for an employee and actually points to hiring to be done on a temporary basis. With the restrictive language found in

the County Resolution it appears any hiring done by the ETSB is to be on a temporary basis, thus limiting such hiring and forbidding full-time employment for such a hire.

Forbidden based on the statutory construction that requires a plain reading of the plain language of the resolution. The power provided was to hire on a temporary basis with no mention of any other reference to full-time employment, by contract or otherwise. Such silence on full-time employment is a prohibition on such hiring as the power was never given and clearly never implied with the use of the term temporary.

A plain reading of the County's duly adopted resolution that delegated limiting powers to the ETSB, infers that it did not intend for employment to be either full time nor by contract. Had they intended either, it would have been included in the resolution.

In reviewing the County Personnel Policy definitions, it provides the following definition for Employee:

Employee- means a person employed by Edgar County, whether on a full-time or part-time basis or pursuant to a contract, whose duties are subject to the direction and control of an employer with regard to the material details of how the work is to be performed but does not include an independent contractor.

See Exhibit 2. Considering the definition includes a person employed by the County pursuant to a contract, we must provide a further analysis as to how that language may or may not apply to the ETSB's ability to provide a contract for employment.

Of interest in the County Policy Manual is page 7 that outlines fringe benefits referred to in the handbook apply to regular full-time employees of the county with 4 exceptions listed.

1. Elected officials and Department heads
2. Employees hired on a contractual basis, unless an individual contract provides otherwise

3. Employees covered by a collective bargaining agreement
4. Personal appointed to serve without compensation.

Item 2 references those hired on a contractual basis as one of those exceptions that are not permitted fringe benefits. However, the question that comes from that item is what county position can be hired on a contractual basis?

Reviewing the County Code as it relates to Edgar County we must analyze the power to contract in general, 55 ILCS 5/5-3002. We found no provision under the Contracts in General that would apply to the ETSB and contract employment.

Reviewing the County Code in its entirety, it is clear the County has limited contracting authority and it clearly spells out each of those cases where they can contract with personnel and in no case does it point to providing the power to ETSB to contract for employment.

Had the legislature intended for the ETSB to have the power to enter into contracts for employees it would have provided such power. The fact the power was withheld is a prohibition of that power. *Cont'l Ill. Nat'l Bank & Tr. Co. v. Peoples Tr. & Sav. Bank*, 366 Ill. 366, 374 (1937).

Applying the above-referenced principal we reviewed other statutes that provide the power to enter into a contract for management of certain county operations. Two statutes in particular that the Edgar County Board actually exercised was a contract for the management of the Airport. See Exhibit 3.

- County Airport Act of 1943: 620 ILCS 45/6 (3). To operate, manage, lease, sublease, and to make and enter into contracts for the use, operation or management of, and to provide rules and regulations for the operation, management or use of any such airport or airport facility.
- General County Airport and Landing Field Act - 620 ILCS 40/6 Sec. 6. The county board of every county has the power (1) to lease all or any part of such an airport, landing field,

facilities, and other structures, and fix and collect rentals therefor, (2) to fix, charge, and collect rentals, tolls, fees, and charges to be paid for the use of the whole or any part of such an airport or landing field, buildings, or other facilities, (3) to make contracts for the operation and management of such an airport, landing field, or other air navigation facilities, and (4) to provide for the use, management, and operation of such an airport, landing field, or air navigation facilities through lessees thereof, or through its own employees, or otherwise.

Additional referenced state statutes of such contracting power given are outlined in several statutes below.

- Airport Authorities Act - 70 ILCS 5/8.03. To operate, maintain, manage, lease, sublease, and to make and enter into contracts for the use, operation or management of, and to provide rules and regulations for the operation, management or use of any public airport or public airport facility.
- County Engineer - 605 ILCS 5/5-202(a). Except as provided under subsection (b) of this Section the term of office of each county superintendent of highways is 6 years and until his successor is appointed and qualified. (6 year contract by law)
- Park District Code - 70 ILCS 1205/8-1. General corporate powers. (i) To make contracts for a term exceeding one year, but not to exceed 3 years, notwithstanding any provision of this Code to the contrary, relating to: the employment of a park director.
- Fire Protection District Act - 70 ILCS 705/6(b). Except as otherwise provided in Sections 16.01 through 16.18, the board may appoint and enter into a multi-year contract not exceeding 3 years with a fire chief and may appoint any firemen that may be necessary for the district

Although there are numerous other examples, the above is a basic example of how the legislature provided statutory authority for certain public bodies to enter into contracts as it relates to management and employment.

Using well established statutory construction it is clear, had the legislature intended for a County ETSB to have the power to enter into contracts with their at-will employees, they would have included it in the applicable legislation. The fact that the legislation governing the ETSB is silent on the subject of entering into contracts with employees, means that the authority is not there. I it is a clear prohibition on the matter.

As if statutory silence is not enough, the County's own resolution that created ETSB makes it very clear that employment is to be a temporary position. It makes no mention of any contracting authority. Alternately, it flies in the face of reason an entity has the ability to bind future administrations. To do this would render some administrations neutered because they would have no ability to make any decisions on their own due to the fact that the previous administration had tied their hands by entering into contracts that extended beyond their own administration. Outgoing political entities should have no power to bind future administrations to contractual obligations.

Additional supporting evidence that a contract for the position in question is not an indispensable power essential to the purpose of the ETSB are the Affidavits of Mr. Allen and Mr. Kraft. Both were present when the ETSB Chairman declared that the only reason the position in question was contracted for was in order to provide protection from political retaliation by the County Board Chairman. That statement affirms, that entering into a contract was not, nor ever has been an indispensable power essential to the ETSB.

In *Grassini v. DuPage Twp.*, 279 Ill. App. 3d 614, Appellant former employee challenged a judgment from the Circuit Court of the 12th Judicial Circuit, Will County (Illinois), which, upon a motion by appellee, township board of trustees, dismissed an action alleging breach of the employment contract, breach of right to due process, and a 42 U.S.C.S. § 1983 claim. The primary issue on appeal was whether the four-year employment contract was ultra vires and therefore void and unenforceable.

Appellant former employee challenged a judgment from a trial court that dismissed her action against appellee township board of trustees after it terminated her employment contract. A prior township board of trustees authorized the contract. Shortly thereafter, newly elected trustees voted to terminate the contract. The former employee brought a six-count complaint, alleging breach of the employment contract, breach of right to due process, and a 42 U.S.C.S. § 1983 claim for alleged interference with her rights to participate in activities on township property.

The trial court granted a motion to dismiss on the grounds that the contract was ultra vires and therefore void ab initio. The appellate court affirmed the judgment of dismissal based on its holding that a township board was not authorized to contract to employ persons for terms greater than the period for which the board making the decision had left to serve. The appellate court held the succeeding board had the option to terminate the employment at its discretion and without a hearing. The appellate court remanded the § 1983 claim to allow the former employee to cure defects by showing how her rights were infringed.

The outcome was that the judgment of dismissal was affirmed because each successive township board was empowered to decide for itself which employees were necessary. The court, however, remanded for the lower court to determine whether appellant, former township employee, should be allowed to amend her claim for violation of her federal rights by showing an actual deprivation of rights resulting from the acts of appellee, township board of trustees.

Similarly, in our present situation, the Successive Board must be empowered to decide for itself which employees are necessary. Approving this employment contract would set a precedent for outgoing Boards to make “Sweetheart Deals” either rewarding or protecting special persons in a legally insufficient and inappropriate manner. For the reasons set forth herein, our strident recommendation is to not only recognize the ETSB Boards’ lack of authority to Contract in this manner, but to take it off the agenda completely as it is a consideration contrary to existing law.