

MEMO TO ERICA

Date: June 5, 2020

Re: Ed Flynn Litigation Legal Opinion

You have advised me that you would be willing to send the check for Ed Flynn's bill under two different conditions:

1. if I provide to you a statute that allows for payment, or
2. If the Attorney General opinion comes back and says that it is permissible to be paid

Since we are still waiting on the Attorney General, I offer the following in support of my legal opinion to pay the bill. I note, first, that I do not find a statute that is specifically on point as far as allowing for payment of the bill. However, there is case law that I believe supports the idea that Flynn has an equitable claim for payment even outside of a statute or a written contract. There is an equitable remedy called quantum meruit, which means that when no written contract is present, a contract may still be implied by the facts and circumstances of the case and recovery is allowed. A plaintiff under this theory would have to prove that it performed a service to the benefit of the defendant, it did not perform the service gratuitously, the defendant accepted the service and no written contract existed to prescribe payment of this service (Jameson Real Estate vs. Ahmed, 2018 Ill. App (1<sup>st</sup>) 171534, 129 N.E.3d, 128, 432 Ill. Dec. 240). In our case, Flynn performed a service that was to the county's benefit, that being legal services. From your own perspective, it may not seem as if we benefitted from some of his services but at least as to him representing the county in arbitration, we did receive a benefit. He did not intend to represent us for free and in fact, up until January he had been paid for his work. The county accepted that service and continued to use him for labor matters. We had a written contract so to speak with the resolution the board passed, but it ended in 2015. I even found a case where a court found that a contract was void ab initio or from the beginning, but the plaintiff would still be allowed to make a claim for damages under the quantum meruit theory. That case was Restore Construction vs. Board of Education of Proviso Township High School, 2009 Ill. App. (1<sup>st</sup>) 181580, 133 N.E.3d 71, in which the plaintiff provided cleanup services after a fire and it was discovered after the fact that the job should have been subject to the bid process. I note that in researching this matter, there are plenty of cases where the courts deny claims of quantum meruit, but the focus of the court seems to be on whether the defendant received a benefit from the services, so the cases are fairly fact specific.

You and I have discussed over the phone your concerns regarding liability to yourself or your office for putting your name on a check that is being paid improperly. I have not found any statutes or case law that would suggest such a liability exists. Certainly, you want to avoid even the appearance of impropriety. As best as I am able to tell in my research, no treasurer has ever faced criminal or civil penalties for paying something as a disbursing agent, where the authority to pay the amount and therefore the liability and responsibility, lies with another person (or the county board).

My fear continues to be that if we do not pay this bill and lose in a trial, we would be paying not only the amount of the bill, but also the costs of litigation and attorney's fees of Flynn in pursuing it. If our

insurance carrier denies coverage and we have to bring an attorney in, or two attorneys in the case of the conflicting positions of the board and you, then we are paying additional taxpayer dollars out that likely would exceed what we are being sued for, so it could be a net loss even if we prevail in the lawsuit.

Lina