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JUL 07 2020

Clerk of the Circuit Court
Macoupin County, Illinois

IN THE CIRCUIT COURT
FOR THE SEVENTH JUDICIAL CIRCUIT
CARLINVILLE, MACOUPIN COUNTY, ILLINOIS

CAMILLE MAYFIELD COOPER BROTZE, And WAYNE BROTZE, husband and wife,	)	
Plaintiffs,	)	
vs	)	No. 2019 MR 92
	)	*(formerly filed as 18 L 5)*
CITY OF CARLINVILLE, ILLINOIS, a Municipal Corporation,	)	
Defendant.	)	

ORDER
Re: Plaintiffs' and Defendant's Motions for Summary Judgment
Pursuant to 735 ILCS 5/2-1005

Case called for hearing via Zoom Videoconferencing on Defendant's Motion for Summary Judgment and Plaintiffs' Motion for Summary Judgment. Plaintiffs appear in person, along with Attorney Smallhorn. Defendant appears in person, along with Attorney Gabala and Attorney O'Brien. Arguments heard.

I.
Introduction

Plaintiffs' Second Amended Complaint for a Writ of Mandamus argues that the Defendant City of Carlinville (Carlinville) and its elected officials owed them a duty to follow Illinois law and that it exceeded its constitutional and statutory authority when it, as a non-home-rule municipality, entered into an agreement[1] with another non-home-rule municipality and a private not-for-profit corporation, wherein the three entities verbally agreed to create and manage a brand

[1] All parties admit no written contract exists between Carlinville and Dorchester or Carlinville and Jersey County Rural Water Company regarding the formation of Illinois Alluvial.

new not-for-profit corporation that would supply potable water to them and surrounding residents. Plaintiffs argue they have a right to expect their elected officials (the City Council, collectively) will follow the law in creating solutions for providing them and the residents with potable water, and that had their elected officials not exceeded their constitutional and statutory authority, then they would have been allowed to know pertinent information as to how the potable water was going to be created and supplied, etc., but that because Carlinville's City Council arguably exceeded its authority, they and the residents of Carlinville have been denied transparency regarding governmental decisions.

In other words, Plaintiffs have argued that they and other similarly situated citizens have a right to expect their elected officials will not exceed or abuse their statutory and constitutional authority, that their elected officials will ensure their water is lawfully supplied to them, and had the City of Carlinville attempted to solve its potable water supply issue by creating or partnering with any of the following statutory entities for non-home-rule municipalities: a "Public Water District, " a "Water Commission, " or a "Municipal Joint Action Water Agency," then Plaintiffs would have had the right to know what decisions were being made regarding potable water and lack of transparency would no longer be an issue.

Plaintiffs' Complaint for Mandamus asks this Court to require the City of Carlinville comply with its constitutional and statutory obligations and withdraw from and cease any further participation in the creation, funding, or operation of Illinois Alluvial Rural Water Company (Illinois Alluvial). Plaintiffs, in essence, are asking this Court to declare Illinois Alluvial is not a legal entity because it was created by two non-home-rule municipalities (in conjunction with a

private not-for-profit corporation) that did not have express constitutional and/or statutory authority in violation of Dillon's Rule.

Both parties acknowledge that in almost approximately 50 years (since the 1970 Illinois Constitution adopted the intergovernmental cooperation provision found in Article 10(a)), not one other "non-home-rule municipality" in the State of Illinois has done what the City of Carlinville did in this case. Both parties also agree that there is no case directly on point, and thus, this is a case of first impression.

II.
Procedural History

On February 23, 2018, Plaintiffs filed their original complaint for declaratory Judgment and injunctive relief in then Macoupin County Case No. 2018-L-5 against the current Defendant, City of Carlinville, as well as the Village of Dorchester, Jersey Rural Water Co., and Illinois Alluvial, seeking, *inter alia*, to prevent the Defendants from participating in the funding and operations of Illinois Alluvial.

On May 4, 2018, Illinois Alluvial filed a Motion for Summary Judgment as well as its Memorandum in support thereof.

On May 8, 2018, Defendant Carlinville filed its Motion to Dismiss Plaintiffs' complaint for lack of standing.

On August 2, 2018, the parties argued the Motions to Dismiss and the Motion for Summary Judgment before the Court.

On or about December 27, 2018, the parties each filed supplemental argument on the application of Dillon's Rule in response to a request from the Court.

On January 2, 2019, the Court issued its written order dismissing the Village of Dorchester and Jersey County Rural Water Company, Inc. for lack of standing. The Court also *sua sponte* dismissed Illinois Alluvial for lack of standing and did not take up its pending Motion for Summary Judgment. Instead, the Court found that motion moot in light of its ruling dismissing Illinois Alluvial for lack of standing. The Court denied Defendant's Motion to Dismiss and gave Plaintiffs 30 days to file an amended complaint.

On May 2, 2019, Plaintiffs filed their First Amended Complaint for declaratory relief against Defendant Carlinville.

On May 16, 2019, Defendant filed its Motion to Dismiss Plaintiffs' First Amended Complaint. Defendant also filed a Motion for Sanctions pursuant to Illinois Supreme Court Rule 137.

On July 22, 2019, Plaintiffs (prematurely) filed a Second Amended Complaint (in Macoupin County Case No. 2018-L-5) abandoning their declaratory and injunctive causes of actions and instead alleging a single-count for a Writ of Mandamus.

In a July 23, 2019 docket entry, the Court acknowledged receipt of Plaintiffs' Second Amended Complaint (filed in Macoupin County Case No. 18-L-5) and noted that it had previously instructed Plaintiffs to refile their cause of action as an MR case (19-MR-92). The Court ordered that, for consistency in rulings, it was consolidating the 18-L-5 matter with the 19-MR-92 matter and again, instructed that all future filings should be made using the 19-MR-92 case number.

Following an August 2, 2019 hearing, the Court granted Defendant's Motion to Dismiss Plaintiffs' First Amended Complaint and directed the Clerk to strike Plaintiffs' Second Amended Complaint but with leave to allow Plaintiffs 14 days to refile a Second Amended Complaint. The court also denied Defendant's Rule 137 Motion for Sanctions.

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On August 7, 2019, Plaintiffs filed a Second Amended Complaint (in Macoupin County Case No. 19-MR-92) alleging a single count for mandamus relief. According to Plaintiffs' Second Amended Complaint, they "have no other mechanism to challenge [Defendant's] abuse of authority regarding [its] participation in the creation, funding, or operation of Illinois Alluvial." Plaintiffs' pleading requests the Court to "issue a Writ of Mandamus compelling the Carlinville Aldermen and Alderwomen, in their official capacities, to take the actions necessary to withdraw from and cease any further participation in the creation, funding, or operation of Illinois Alluvial."

On September 4, 2019, Defendant filed three Section 2-615 Motions to Dismiss Plaintiffs' complaint for their failure to state a claim for (i) mandamus relief, (ii) a violation of the Open Meetings Act ("OMA"), or (iii) a violation of the Freedom of Information Act ("FOIA").

On September 30, 2019, Plaintiffs filed their response to Defendant's Motions to Dismiss arguing they had plead adequate facts for mandamus and that the Court "has previously determined in this case and recited in its prior Orders that Plaintiffs have a right to expect that their local government will conduct itself with transparency and comply with applicable laws."

Plaintiffs' response also contained a request that the Court find "pursuant to Illinois Supreme Court Rule 308 that any Order the Court renders regarding Defendant's Motion to Dismiss involves a question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal from the Order may materially advance the ultimate termination of the litigation." Plaintiffs then articulated the question of law before the Court as follows: "Does [Defendant], a non-home rule municipality, have authority under Article VII of the Illinois Constitution to join with other municipalities and one or more private, not-for-profit corporations to create, manage and fund an Illinois not-for-profit corporation, where there is no statute which expressly authorizes the creation of such a corporation?"

On October 17, 2019, the trial court held a hearing on Defendant's Motions to Dismiss. In its October 21, 2019, written order, the Court denied Defendant's Motion to Dismiss Plaintiffs' complaint, finding that "a Writ of Mandamus can be used to compel the undoing of an act not authorized by law or to require public entities and/or officials to comply with State law. Plaintiffs have raised a valid argument, and this Court will not deprive them of the opportunity to litigate their [mandamus] cause of action." The Court denied Defendant's Motions to Dismiss relating to OMA and FOIA violations, finding Plaintiffs did not attempt to state a cause of action based on OMA or FOIA because the facts as pled did not support either cause of action. The Court granted Plaintiffs' request to present a certified question subject to a review of Defendant's opposition and a refinement of the question.

On October 24, 2019, Defendant filed an alternative certified question for the Court's consideration. On October 25, 2019, Plaintiffs filed their revised proposed certified question.

On November 1, 2019, the Court issued its order finding "[a] question of law exists as to which there is a substantial ground for difference of opinion, and an appeal from the Court's October 21, 2019 Order denying Defendant's Motions to Dismiss may materially advance the ultimate termination of the litigation." The Court then issued the following certified questions for appeal:

> (a) Whether a non-home rule municipality has authority under Article VII of the Illinois Constitution to join with another non-home rule municipality/village and a private, not for-profit corporation for purposes of creating a brand-new not for profit corporation that is intended to supply potable water to the region where there is no statute that expressly authorizes the creation of such a corporation? And if the answer is in the negative, .
>
> (b) May the Court then issue a writ of mandamus and order the non-home rule municipality to withdraw as a member of the newly created, private not-for-profit regional water corporation because it was formed without express statutory authority?

On November 21, 2019, Plaintiffs filed their "Application for Leave to Appeal (Pursuant to Illinois Supreme Court Rule 308)" with the Fourth District Appellate Court.

On November 26, 2019, the Court granted Defendant's Motion to Stay the trial court proceedings pending the resolution of the Rule 308 appeal.

On December 11, 2019, Defendant filed its Answer in Opposition to Plaintiffs' Supreme Court Rule 308 Application.

On December 19, 2019, the Fourth District Appellate Court issued its order denying Plaintiffs' Application for Leave to Appeal Pursuant to Illinois Supreme Court Rule 308.

On December 26, 2019, the Court granted Defendant's Motion to lift the stay in the proceedings.

On January 24, 2020, Defendant filed its Answer and Affirmative Defenses to Plaintiffs' Second Amended Complaint. Plaintiffs did not file any response to Defendant's affirmative defenses.

On April 3, 2020, Defendant filed its Motion for Summary Judgment.

On April 27, 2020, Plaintiffs filed their Motion for Summary Judgment.

On June 9, 2020, this Court held a hearing on the parties' pending Motions for Summary Judgment. The parties were granted leave to submit proposed orders.

The parties agreed the relevant facts underlying the instant dispute are not at issue.

III.
Statement of Undisputed Facts

1) The Plaintiffs, husband and wife, own a residence in Carlinville, Illinois which is connected to the City's potable water distribution system. Defendant City of Carlinville is a non-home rule municipal corporation. The Village of Dorchester is also a non-home rule municipality. Jersey County Rural Water Company, Inc. ("Jersey County Rural Water Co.") is an Illinois private, not-for-profit corporation. All three entities are seeking a new source of potable water.

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2) On or about December 22, 2015, the City of Carlinville submitted an Application for Federal Assistance, wherein the City of Carlinville informed the Federal Government that the Project was for a Regional Water System for purposes of developing a *Regional Water Commission* by partnering with Jerseyville, Jersey County Rural Water Company, and Fosterburg Water District. The application further stated, "The City of Carlinville is the lead entity *until a water commission* can be formed." (Emphasis added. "Water Commission" is found in 70 ILCS 3720/0.001 *et seq.*)

3) On March 8, 2016, the City of Carlinville entered into a Grant Agreement with the United States Department of Agriculture (USDA), wherein the City of Carlinville was awarded $30,000.00 in federal grant money for purposes of developing a Regional Water Commission.

4) On October 2, 2017, Carlinville City Council voted to grant Alderwoman Campbell power to appropriate funds to Illinois Alluvial Regional Water Company, Inc. (Illinois Alluvial) on behalf of Carlinville, without the need to seek prior Council approval. At the time this vote was made, Illinois Alluvial was not a legal entity, did not have By-Laws, and had not yet been incorporated.

5) On November 30, 2017, representatives of Defendant, Jersey County Rural Water Co. and the Village of Dorchester adopted the By-Laws for Illinois Alluvial.

6) At no time prior to November 30, 2017 or thereafter did Defendant City of Carlinville, a non-home rule municipality, enter into a contract or intergovernmental agreement with the Village of Dorchester and/or Jersey County Rural Water Co., regarding its intentions of joining with another non-home rule municipality and a not-for-profit water corporation for purposes of creating a new non-for-profit corporation to address its water supply needs.

7) On December 5, 2017, Illinois Alluvial was incorporated as a non-for-profit Corporation with the Illinois Secretary of State for an unlimited duration. The Board of Directors consist of three members: a representative from the City of Carlinville, a representative from the Village of Dorchester, and a representative from Jersey County Rural Water Co. Membership in Illinois Alluvial is restricted to municipalities and not-for-profit rural water companies. For-profit corporations are not permitted to become members. Illinois Alluvial does not have any shareholders.

8) On December 14, 2017, Counsel for Illinois Alluvial sent Counsel for City of Carlinville a "Notice of Criminal Trespass," wherein counsel stated under no circumstances would uninvited members of Carlinville City Council be allowed to attend Illinois Alluvial's meetings because Illinois Alluvial is a private entity and not subject to the Open Meetings Act. The letter further stated that any attempt to attend its meetings would be reported to local law enforcement as criminal trespass and

prosecuted. Illinois Alluvial further stated "[i]t 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." (See Exh. F attached to Plaintiffs' Response to Motion for Summary Judgment)

9) Illinois Alluvial was not created as a "Public Water District" under the Public Water District Act, 70 ILCS 3705/0.01 et seq.; it does not comply with the provisions of the Water Authorities Act, 70 ILCS 3715/0.01 et seq.; nor is it a "Water Commission" as that term is identified in the Water Commission Act of 1985, 70 ILCS 3720/0.001 et seq.; nor it is not a "Municipal Joint Action Water Agency" as that term is described in the Intergovernmental Cooperation Act, 5 ILCS 220/3.1; nor is the association of Carlinville and another municipality with private companies (Jersey Rural and Illinois Alluvial) authorized by any of the provisions of the Illinois Municipal Code relating to Water Supply and Sewage Systems, 65 ILCS 5/11-124-1 et seq.

10) Plaintiffs claim that Defendant City of Carlinville is without constitutional and statutory authority to participate in the incorporation, funding, or operation of Illinois Alluvial. Plaintiffs further argue the residents of the City of Carlinville have the right to expect their elected official will comply with the law while maintaining transparency.

11) Defendant argues the Municipal Code provides broad authority to enter into contracts to purchase potable water from private companies as well as construct, own, and operate their own public potable water treatment facilities and distribution systems.

12) Defendant also contends that Article VII, Section 10(a) of the 1970 Illinois Constitution expressly allows municipalities to exercise their authority over the public water supply through an association with other municipalities and private corporations without the need for separate statutory authority.

13) Defendant maintains its association with the Village of Dorchester and Jersey Rural Water Co. to form Illinois Alluvial is therefore proper.

IV.
Analysis

"Summary judgment is proper when 'the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a Judgment as a matter of law.' " *Stevens v. McGuireWoods LLP*, 2015 IL 118652, ¶ 11 (quoting 735 ILCS 5/2-1005(c). "Where the parties file cross-Motions

for Summary Judgment, as they did in this case, they concede the absence of a genuine issue of material fact, agree that only questions of law are involved, and invite the court to decide the issues based on the record." *McGuireWoods LLP*, 2015 IL 118652, ¶ 11.

The only issue pending before the Court is whether Defendant Carlinville had constitutional and statutory authority to join with another non-home rule municipality and a not-for-profit corporation to form and operate Illinois Alluvial, a private not-for-profit organization. To address this issue, this Court considers Article VII of the Illinois Constitution of 1970 ("Constitution") as a whole, with a special focus on Sections 6, 7, and 10.

Defendant argues that Article VII, Section 10(a) of the Illinois Constitution grants Defendant the right to "associate" with private corporations, and that its relationship with Dorchester, Jersey County Rural Water Company, and Illinois Alluvial is such a permitted association.

Article VII, Section 10(a) of the Constitution specifically states as follows:

> Units of local government and school districts may contract *or* otherwise associate among themselves, with the State, with other states and their units of local government and school districts, and with the United States to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or by ordinance. Units of local government and school districts may contract *and* otherwise associate with individuals, associations, and corporations in any manner not prohibited by law or by ordinance. Participating units of government may use their credit, revenues, and other resources to pay costs and to service debt related to intergovernmental activities.

Il. Const., Art. VII, Sec. 10(a), West 2020 (emphasis added).

Read literally, the City of Carlinville may contract ***or*** otherwise associate with Village of Dorchester to obtain or share services and to exercise, combine, or transfer any power or function, *in any manner not prohibited by law or ordinance*. In addition, the City of Carlinville may contract ***and*** otherwise associate with Jersey County Rural Water, Co

in any matter not prohibited by law or by ordinance.

Since the inception of this case, Defendant City of Carlinville has argued it could "associate" in any manner it chose to so long as there was no law to the contrary. When a court interprets the Constitution, however, each word, clause, and sentence must be given a reasonable construction if possible and should not be rendered superfluous. See *Bettis v. Marsaglia*, 2014 IL 117050, ¶13, 23 N.E.3d 351 (2014), *Rottman v. Ill. State Officers Electoral Board*, 2018 IL App (1st) 180234, ¶ 15, 102 N.E.3d 819, 825 (1st Dist. 2018). When the legislature uses certain words in one instance and different words in another, different results are intended. *Id.*

> Citizens cannot pick and choose which statutes apply to them. Statutes are read together and construed in a harmonious fashion. *Schaumburg State Bank v. Bank of Wheaton*, 197 Ill. App. 3d 713, 720, ... 555 N.E.2d 48, 52 (1990); *Knolls Condominium Ass'n v. Harms*, 202 Ill. 2d 450, 458–59, ... 781 N.E.2d 261, 267 (2002) ('A court presumes that the legislature intended that two or more statutes which relate to the same subject are to be read harmoniously so that no provisions are rendered inoperative.'). Furthermore, it is presumed that the General Assembly acts rationally and with full knowledge of all previous enactments and will not enact a law which contradicts a prior statute unless it expressly repeals the prior language. *State of Illinois v. Mikusch*, 138 Ill. 2d 242, 247–48, ... 562 N.E.2d 168, 170 (1990). In the unlikely event, however, that a general statute and specific statute on the same subject are conflicting, the specific language will control. *Mikusch*, 138 Ill. 2d at 254, ... 562 N.E.2d at 173.

Fischetti v. Village of Schaumburg, 2012 IL App (1st) 111008, ¶6 (emphasis added).

Article VII, Section 10(a) of the Constitution uses the conjunction "or" when granting units of local government the right to contract or otherwise associate *amongst themselves*; meaning that units of local government may choose between a contract or another form of association when dealing with other units of local government. Conversely, Article VII, Section 10(a) of the Constitution uses the conjunction "and" when describing the ability of a unit of local government *to contract and associate* with a *private corporation*; meaning that there must be both a contract

and a type of association for the constitutional requirement to be fulfilled. Defendant's focus on the word "may" in its proposed Order is misplaced, but the Court's analysis does not stop there.

The Court now turns to Defendant's argument that the City of Carlinville's actions were permitted because they were not specifically prohibited by law or ordinance. In *Rajterowski v. City of Sycamore,* 405 Ill. App. 3d 1086, 1119, 940 N.E.2d 682, 709 (2d Dist. 2010), the Court analyzed school districts/non-home-rule entities' powers under Article VII, Section 10(a) and the authority they may exercise via intergovernmental agreements. *Rajterowski* held

> [t]he constitution provides that school districts 'shall have only powers granted by law.' Ill. Const.1970, art. VII, § 8. This provision preserves the concept of 'Dillon's Rule.' Under 'Dillon's Rule,' non-home-rule units possess only those powers that are specifically conveyed by the constitution or by statute or that are necessarily implicit from the express authority. *Commonwealth Edison Co. v. City of Warrenville*, 288 Ill. App. 3d 373, 380, .. 680 N.E.2d 465 (1997); *Fischer v. Brombolich*, 207 Ill. App. 3d 1053, 1059 ... 566 N.E.2d 785 (1991). Because a non-home-rule entity derives its powers only from 'an express grant from the legislature, the statutes granting this power are strictly construed, and any doubt concerning an asserted power is resolved against the [non-home-rule entity].' *Fischer*, 207 Ill.App.3d at 1059, ... 566 N.E.2d 785.

Rajterwoski, at 1119 (emphasis added).

Thus, when analyzing Section 7 of Article VII in the context of "Counties and Municipalities Other than Home Rule," this Court must reach the same conclusion[2]. Just as the Court in *Rajterowski* read Article VII as a whole and found Section 8 limits school districts' powers to what is specifically granted by law, Section 7 limits non-home-rule municipalities' powers to those that are granted to them by law and the powers

> (1) to make local improvements by special assessment and to exercise this power jointly with other counties and municipalities, and other classes of units of local government

[2] The Court in *Rajterowski* made this finding even with consideration of the language contained in Section 10(a), which states "... *[S]chool districts* may contract or otherwise associate among themselves, with the State, with other states and their units of local government and school districts, and with the United States to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or by ordinance. ... *[S]chool districts* may contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law or by ordinance. (Emphasis added).

> having that power on the effective date of this Constitution unless that power is subsequently denied by law to any such other units of local government; (2) by referendum, to adopt, alter or repeal their forms of government provided by law; (3) in the case of municipalities, to provide by referendum for their officers, manner of selection and terms of office; (4) in the case of counties, to provide for their officers, manner of selection and terms of office as provided in Section 4 of this Article; (5) to incur debt except as limited by law and except that debt payable from ad valorem property tax receipts shall mature within 40 years from the time it is incurred; and (6) to levy or impose additional taxes upon areas within their boundaries in the manner provided by law for the provision of special services to those areas and for the payment of debt incurred in order to provide those special services.

See Article VII, Sec. 7 of the Illinois Constitution; *see also, Fischetti,* (where "it is presumed that the General Assembly acts rationally and with full knowledge of all previous enactments and will not enact a law which contradicts a prior statute unless it expressly repeals the prior language [and] in the unlikely event ... that a general statute and specific statute on the same subject are conflicting, the specific language will control", citing *Mikusch,* 138 Ill. 2d at 254). Defendant has cited no reason why this Court should not follow the same holding in *Rajterowski.* The Court finds *Village of Sherman v. Village of Williamsville* 106 Ill. App. 3d 174 (4th Dist. 1982) distinguishable to the facts of this case because in that case, the two municipalities entered into an intergovernmental agreement, which is clearly permitted.

Further, although not required, the fact remains that Defendant City of Carlinville did not have any contract (or intergovernmental agreement) in place with the Village of Dorchester regarding the formation of Illinois Alluvial. This fact is important because Defendant has asked the Court numerous times to rely on the transcripts from the debates from the 1970 Constitutional Convention in analyzing Section 10(a). When the Court looks at those transcripts, it cannot ignore the fact that the legislative representatives also stated, for instance, "... there are many special areas that come up, and this would permit those nonhome rule units to go ahead and make a contract, unless it was in an area that has been prohibited by legislative action." It is undisputed

that the City of Carlinville also did not enter into a contract with Jersey County Rural Water Company, Inc. or any other entity regarding the formation, funding, and operation of Illinois Alluvial. Even if the City of Carlinville contracted with Jersey County Rural Water Company (which it did not) and associated with the Village of Dorchester to create Illinois Alluvial, the Court finds the City of Carlinville exceeded its authority and did not fulfil its constitutional obligations under Article VII, Sections 7 and 10(a). The General Assembly provided entities such as Defendant with five different methods by which Defendant could enter into agreements and otherwise associate with others to solve its water problem. Creating a brand-new private entity that is not subject to transparency and public input was not one of them. Furthermore, one must ask… if the Court adopts Defendant's argument (as found on p. 11 of Defendant's proposed Order) that the City of Carlinville could merely associate with the Village of Dorchester and the two of those non-home-rule municipalities could then just decide to create and form Illinois Alluvial, a not-for-profit corporation, then why hasn't any other non-home-rule municipality done this in almost 50 years since the 1970 Constitutional Convention? If it is not prohibited by any law or regulation, then why is this the first non-home-rule municipality to ever conduct itself in this manner?

Defendant also relies on 65 ILCS 5/11-124-1 of the Municipal Code and *Wabash v. Partee*, 241 Ill. App. 3d 59, 66-67 (5th Dist. 1993) to argue it and its elected officials had authority to act in the manner they did. However, a careful reading of that statute shows how Defendant did not comply with its terms either. According to that statute, "[t]he corporate authorities of each municipality may contract with any person, *corporation*, *municipal corporation*, political subdivision, public water district *or any other agency* for a supply of water." (Emphasis added). It does not state the corporate authorities "may otherwise associate in any manner" with these entities. Similarly, *Wabash* states "…section 10 of article VII of the 1970 Constitution provides

that *units of local government may contract with each other* and with the State to obtain or share services and to exercise, combine or transfer any power or function if not otherwise prohibited by law. Ill. Const. 1970, art. VII, section 10. The constitutional grant to local governments of the *authority to contract with each other* is supported by the Intergovernmental Cooperation Act." *Wabash*, 241 Ill. App. 3d at 66 (emphasis added).

Defendant attempts to argue the By-laws and Articles of Incorporation by their definition are a contract. The Court does not accept this argument. But assuming *arguendo* this to be true, the terms of the "contract" do not conform with the requirements set forth in this section of the Municipal Code pertaining to water supply, and that argument must fail.

In this case, the Court agrees that the City of Carlinville could have *associated* with the Village of Dorchester and contracted with Jersey Country Rural Water Company for purposes of creating a potable water supply, but for these three entities to create a brand new, private not-for-profit corporation for purposes of ultimately selling water without public input is inconsistent with the Illinois Constitution, the statutory authority and case law cited herein, and was an attempt to circumvent the Illinois General Assembly's grant of authority in solving Defendant Carlinville's water problem. If the Legislature intended for Defendant Carlinville, a non-home-rule municipality, to have free reign of authority and power and to do whatever it saw fit without a contract and/or input from its residents, then why would the Legislature have created five different ways a non-home-rule municipality could create a joint water treatment and distribution scheme?

Defendant's final argument that "Plaintiffs' delay in filing their mandamus action will result in significant inconvenience and detriment to the public in that the abandonment of the ongoing association with [Illinois] Alluvial will be more disruptive to the financial position of the city, interfere with contractual obligations, and jeopardize the safety of the city water supply" is

also misplaced. Defendant was put on notice in February 2018 (within 6 months of learning of Defendant's conduct) that Plaintiffs were asking this Court to find Defendant exceeded its authority and that Illinois Alluvial is, therefore, a void corporation.

Here, both parties' pleading defects contributed to additional delays. Moreover, it would have been improper for this Court to Dismiss Plaintiffs' Complaint with prejudice when it was clear from the facts as alleged that they had a viable cause of action. It was simply pled incorrectly. In addition, Defendant also contributed to delays by filing premature Motions that had to be stricken and motions to dismiss that pertained to issues that were not even pled. Other delays were attributable to unexpected health issues that further impacted and complicated scheduling. At the end of the day, no one forced the City of Carlinville to continue moving forward with its participation in and creation of Illinois Alluvial after being put on notice. Defendant voluntarily took that risk and gambled with how this Court would ultimately rule.

V.
Conclusion

As stated in this Court's previous Order,

> The Court recognizes water supply is an issue for the residents of Carlinville. The Court recognizes that the City has tried to take steps to rectify the issue. And while the Court is sympathetic to the needs of the residents with regard to clean, potable water, the Court cannot allow sympathy and compassion to enter into its analysis; nor can the Court consider what developments may or may not be occurring right now or how much money has since been invested because those facts are not before the Court.

The Court finds Plaintiffs "have a protectable interest in ensuring that public officials follow the requirements of public statutes." See *Lombard Historical Comm'n v. Village of Lombard*, 366 Ill. App. 3d 715, 718, 852 N.E.2d 916, 920, (2d Dist. 2006), citing *American Federation of State, County, & Municipal Employees, Council 31 v. Ryan,* 332 Ill. App. 3d 866, 876, 773 N.E.2d 739 (4th Dist. 2002). Defendant City of Carlinville has admitted in Court that

the course of action it took to participate in the funding and operation of Illinois Alluvial does not conform to any of the statutorily authorized means by which it could do so. It also did not have express authority under Section 7, Article VII of the Illinois Constitution to do what it did, and as a non-home-rule municipality, Article VII, Section 7 of the Constitution requires that Defendant may only undertake actions which are granted to it by law[3].

"Because a non-home-rule entity derives its powers only from 'an express grant from the legislature, the statutes granting this power are strictly construed, and any doubt concerning an asserted power is resolved against the [non-home-rule entity].'" *Fischer*, 207 Ill. App. 3d at 1059, 566 N.E.2d 785; *cf.* Article VII, Sec.6, Par.(m) (where powers granted to Home Rule Municipalities are to be "construed liberally"). Defendant has failed to provide any constitutional or statutory authority for the actions it undertook in the formation and operation of Illinois Alluvial.

WHEREFORE, THE COURT FINDS:

Defendant's Motion for Summary Judgement is DENIED, including its laches and standing arguments. The Court also incorporates its findings and rulings made in open court regarding Defendant's affirmative defenses. Plaintiffs' Motion for Summary Judgment is GRANTED, and Judgment is entered in favor of Plaintiffs on their Second Amended Complaint.

The Court issues a Writ of Mandamus to compel the undoing of an act not authorized by law and to require public entities, such as the City of Carlinville and its officials, to comply with State law.

THE COURT FURTHER FINDS that based on the City of Carlinville's unauthorized actions, Illinois Alluvial was created in violation of the law and is a void corporation.

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[3] See case law cited by Plaintiffs on pp. 8 and 9 in their Motion for Summary Judgment, filed April 27, 2020.

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FINALLY, pursuant to Illinois Supreme Court Rule 304(a), there is no just reason for delay of either enforcement or appeal of this Order.

Entered: July 7, 2020

By: _____
April G. Troemper
Circuit Court Judge, 7th Judicial Circuit