

No. _____

In the Supreme Court of Illinois

CAMILLE MAYFIELD COOPER	)	On Petition for Leave to appeal from
BROTZE and WAYNE BROTZE,	)	the Illinois Appellate Court, Fourth
Husband and Wife,	)	Judicial District, Cons. Case Nos.
	)	4-20-0369, 4-20-0383, and 4-20-
Plaintiffs-Petitioners,	)	0384
)	
Vs.	)	There on Appeal from the Circuit
	)	Court of Macoupin County, Illinois,
THE CITY OF CARLINVILLE, ILLINOIS	)	Case Nos. 18-L-5 and 19-MR-92
A Municipal Corporation; THE VILLAGE)	
OF DORCHESTER, ILLINOIS, a	)	Hon. April S. Troemper,
Municipal Corporation; JERSEY COUNTY	)	<i>Judge Presiding</i>
RURAL WATER COMPANY, INC., an)	
Illinois Not-for-Profit Corporation; and)	
ILLINOIS ALLUVIAL REGIONAL)	
WATER COMPANY, INC., an Illinois)	
Not-for-Profit Corporation,)	
)	
Defendants-Respondents.)	

**PETITION FOR LEAVE TO APPEAL
PURSUANT TO SUPREME COURT RULE 315**

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Oral Argument Requested

PRAYER FOR LEAVE TO APPEAL

Pursuant to Illinois supreme Court Rule 315, Camille Mayfield Cooper Brotze and Wayne Brotze (the “Brotzes”) respectfully petition this Court for leave to appeal the judgment of the Illinois Appellate Court for the Fourth District in *Brotze v. City of Carlinville*, 2021 IL App (4th) 20036. (A 1-15)¹

The trial judge found in favor of Petitioners. (A 16-32). In its desire to reverse the trial judge and uphold the City of Carlinville’s (“Carlinville”) decision to join with other non-home rule municipalities and a private company to create a new private business, Illinois Alluvial Regional Water Company, Inc. (“Alluvial”), to sell potable water in West Central Illinois, the appellate court issued a ruling that greatly enhanced the powers of non-home rule municipalities at the expense of public transparency and accountability. The appellate court’s opinion creates a false equivalency with its prior precedent which goes far beyond the intent of the framers of the 1970 Illinois Constitution.

The appellate court’s decision conflicts with its own prior precedent in *Connelly v. County of Clark*, 16 Ill. App. 3d 947, 951, 307 N.E.2d 128, 131 (1973) (holding that county could not engage in business of selling gravel to other municipalities on an isolated basis without an agreement in place). *Connelly* stands for the proposition that just because a county has the right to create a gravel pit to fix its own roads, that does not

¹ Petitioner is using the record on appeal from Appellate Court Case Nos. 4-20-0369, 4-20-0383, 4-20-0384 cons, which will be cited as “C __,” and the record on appeal from same, which will be cited as “R __.” Citations to this Petition’s appendix are cited “A __.”

mean it can go into the business of selling gravel to others when there is no intergovernmental agreement in place. *Id.*

Common sense dictates that non-home rule municipalities should not have the unfettered ability to start and operate private businesses to provide public services. Allowing a non-home rule municipality to do so circumvents the intent of the Illinois Constitution in differentiating between the more expansive powers of home rule municipalities and the more limited powers of non-home rule municipalities. Allowing a non-home rule municipality to create a private company to sell goods and services to others outside of the municipality's jurisdiction also circumvents the public's ability to know what their government is doing and participate in the decision-making process.²

Nonetheless, this is exactly the type of conduct the appellate court sanctioned in the order below. The appellate court's logic in this case was that Carlinville had the ability to regulate its water supply so Carlinville was just changing the "method" by which it went about managing its supply when it joined with others to form Alluvial. (A 11, ¶37). The appellate court's decision makes no mention of the fact that Carlinville is using Alluvial to sell water outside its jurisdiction.

The impact of the appellate court's decision would be far-reaching if left in place. The appellate court has sanctioned a non-home rule municipality's ability to create a private company to sell a product, in this instance potable water, to others. If left uncorrected, the decision below would greatly enhance the power of non-home rule

² In this case, Alluvial has taken the position that members of the public, and even Carlinville City Council members, are barred from attending its meetings. They have even notified the City Council in writing that if board members try to attend uninvited, they will be charged with trespass. (C.

municipalities to take actions they could not otherwise take by joining with others to create a private company under the guise of “intergovernmental cooperation.” This Court should accept the Brotzes’ petition for review and declare Carlinville’s actions unconstitutional just as the trial judge did.

JUDGMENT BELOW

The Fourth District entered its judgment on March 2, 2021 (A 1-15). The Brotzes did not file a petition for rehearing.

POINTS RELIED UPON FOR REVIEW OF APPELLATE COURT JUDGMENT

This case poses one fundamental question warranting review by this Court. Does Article VII, 10(a) of the 1970 Illinois Constitution give Carlinville, a non-home rule municipality, the authority to join with other non-home rule municipalities and a private company to create another private company to sell water to other municipalities, all without any contracts or agreements in place prior to the formation of the company?

Carlinville has admitted that the sole basis for its creation of, funding, and participation in Alluvial is Art. VII, § 10(a) of the 1970 Constitution. (A 4). Carlinville and Alluvial also admit that no contracts were in place, and that Alluvial was not yet in existence, when the Carlinville City Council voted to appoint a member to Alluvial’s board and fund Alluvial with federal grant money Carlinville previously applied for. (A 23). The opinion below embraces an unrestrained reading of the “intent” of the framers of the 1970 Constitution with regard to Art. VII, § 10(a) which renders Dillon’s Rule, which is elsewhere enshrined in the Illinois Constitution under § 7 of Art. VII, functionally meaningless. If left unchecked, the below decision would gut the public’s ability to monitor how its government conducts its business and subvert government

accountability by allowing a private company to sell products and spend grant and general revenue funds on behalf of the municipality without public oversight.

STATEMENT OF FACTS

A. Creation of Alluvial

The essential facts of this case are not in dispute. (*See* A 22-24). The Brotzes are a married couple who own a residence in Carlinville. They are Carlinville water customers who regularly use Carlinville’s municipal water supply. *Id.* Carlinville is a non-home rule municipality in Macoupin County, Illinois. *Id.*

On or about January 25, 2016, Carlinville applied for a grant with the United States Department of Agriculture’s (“USDA”) Water and Waste System Grant Program for preliminary engineering on options for developing a viable water supply, treatment, and transmission system to serve a “Regional Water Commission” in Greene, Jersey, and Macoupin Counties. (C 634-35). On March 8, 2016, the USDA entered into a Grant Agreement with Carlinville, awarding Carlinville \$30,000 for project development costs. (C 636-42).

On October 2, 2017, before Alluvial was incorporated or Bylaws were adopted, the Carlinville City Council voted to grant “Alderman Campbell the power to act and appropriate funds as representative of Carlinville” to Illinois Alluvial. (C 38).

Representatives of Carlinville, Jersey County Rural Water (“JCRW”), and the Village of Dorchester, Illinois (“Dorchester”) signed Bylaws for Alluvial on November 30, 2017. (C 646-48). The same members filed Alluvial’s Not-For-Profit Articles of Incorporation with the Illinois Secretary of State on December 5, 2017. (C 659-60).

The parties agree that the Illinois Compiled Statutes do not contain any provisions which would expressly allow Carlinville to take the course of action it chose in participating in the formation of Alluvial. (A 24). Carlinville and Alluvial claim that the source of Carlinville's authority to join with Dorchester, a non-home rule municipality, and JCRW, a private company, in the creation of a private company rests solely in Article VII, § 10(a) of the Illinois Constitution of 1970. *Id.* The parties do not dispute that Carlinville did not have any contracts in place with Dorchester or JRCW prior to participating in the formation of Alluvial. (A 23).

B. Circuit Court Proceedings

In February 2018, the Brotzes filed a complaint designated as 2018-L-5 against defendants, Carlinville, Dorchester, JCRW, and Alluvial. (C 18-44). After the defendants filed motions to dismiss, the trial court entered a written order in January 2019 dismissing Dorchester, JCRW and Alluvial for lack of standing. (C 463-471). The trial court gave the Brotzes leave to file an amended complaint against Carlinville. *Id.*

After further motion practice, in July 2019 the Brotzes filed a second amended complaint for mandamus against Carlinville in consolidated case no. 2019-MR-92. (A 4). In April 2020, Carlinville filed a motion for summary judgment. *Id.* The Brotzes filed a cross motion for summary judgment in April 2020. *Id.* On July 7, 2020, the trial judge, Hon. April Troemper, issued an Order denying Carlinville's motion for summary judgment and granting the Brotzes' motion. (A. 16-32). The Order further declares that Alluvial is a void corporation due to Carlinville's illegal participation in its formation. *Id.*

C. Appellate Proceedings

In August 2020, Carlinville filed a notice of appeal, and within 10 days Alluvial filed a notice to appeal pursuant to Illinois Supreme Court Rule 303(a)(3) in both the MR and L cases. (A 7). Three separate appeals were docketed by the appellate court. *Id.* Alluvial moved to consolidate the cases, but the motion was denied prior to oral argument. *Id.*

In January and February 2021, the appellate court conducted two separate oral arguments, one involving Alluvial and another involving Carlinville. *Id.* The cases were consolidated on the appellate court's own motion after oral argument. *Id.* The opinion which is the subject of this petition was entered by the appellate court on March 2, 2021. This petition for Supreme Court review ensues.

ARGUMENT

The Illinois Supreme Court should accept review and reverse the Appellate Court's erroneous decision that Carlinville could create, fund, and participate in the management of a private business selling water throughout West Central Illinois. The opinion below held that Carlinville's actions were within the scope of Art. VII, § 10(a) and Carlinville needed no other authority to create a private company to sell water outside its jurisdiction. (A 11). This Court should accept review of this dangerous ruling and reverse it on the basis that the appellate court's decision conflicts with its own ruling in *Connelly*, the intent of the framers of the 1970 Constitution who drafted Art. VII, § 10(a), and conflicts with well settled principles of statutory construction and the plain meaning of § 10(a) of Art. VII. Simply put, the appellate court's opinion impermissibly

widens the scope of conduct a non-home rule municipality like Carlinville is authorized by law to engage in.

Section 7 of Article VII of the 1970 Constitution provides that non-home rule municipalities like Carlinville have only those powers expressly granted to them by law. ILCS Const. Art. 7, § 7, “Counties and Municipalities other than Home Rule Units.” One notable carveout is § 10(a) regarding intergovernmental cooperation, which provides as follows:

- (a) 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.

ILCS Const. Art. 7, § 10(a), “Intergovernmental Cooperation.”

There are multiple statutes which expressly authorize a municipality to join with other governmental and non-governmental entities to solve a regional water problem. The Public Water District Act, 70 ILCS 3705/0.01 *et seq.*, allows a municipality to create a Public Water District. The Water Authorities Act, 70 ILCS 3715/0.01 *et seq.*, grants voters the right to petition a court for creation of a Regional Water Authority. The Water Commission Act of 1985, 70 ILCS 3720/0.001 *et seq.*, grants a County the ability to create a Water Commission. The Intergovernmental Cooperation Act, 5 ILCS 220/3.1, vests municipalities like Carlinville with the power to enter into an intergovernmental agreement and create a Municipal Joint Action Water Agency. The Illinois Municipal

Code, 5 ILCS 5/1-1-1 *et seq.*, grants municipalities the power to enter into contracts to solve their water problems under Art. 11, Div. 124. The Municipal Code, Art. 11, Div. 125, grants municipalities wide latitude in constructing wells and waterworks. Art. 11, Div. 126 of the Municipal Code even grants municipalities the right to enter into an agreement with another municipality to construct and supply water to residents on a cooperative basis.

It is undisputed that Carlinville chose none of these options when deciding to participate in the formation, funding, and operation of Alluvial. (A 24). Carlinville also agrees that it did not have any intergovernmental agreements or other contracts in place prior to voting to appropriate funds to Alluvial. *Id.*

The Brotzes argued before the appellate court that the Illinois General Assembly created multiple ways a non-home rule municipality can solve its water problem, and that the doctrine of “*expressio unius*” (the inclusion of one or more options excludes other omitted ones, *see Shakman v. Dep’t of Revenue*, 2019 IL App (1st) 182197) precludes them from choosing other options outside of the law. The trial judge also found that the plain meaning of § 10(a) was that a non-home rule municipality needed both a contract and an “association” prior to acting cooperatively with private entities like JCRW, and there was no contract or joint venture in place at the time the Carlinville City Council voted to appropriate funds and appoint a board member to Alluvial (which was not yet even in existence at the time). *Id.*

A. The appellate court’s opinion ignores the precedent it set in *Connelly*.

The appellate court’s opinion directly conflicts with its own prior precedent in *Connelly*, 16 Ill. App.3d at 951, and *Village of Sherman v. Village of Williamsville*, 106

Ill. App. 3d 174 (4th Dist. 1982). Even though the facts of this case are strikingly similar to the facts in *Connelly*, the appellate court decided to ignore the limitations it put on Clark County in *Connelly* prohibiting Clark County from isolated sales of gravel to municipalities when there is no “joint venture” such as apportioning costs, arrangements for operation of the gravel facility, or joint funding. *Connelly*, 16 Ill. App.3d at 951. Instead, the appellate court chose to use a “methods” versus “subject matter” distinction it alleges it gleaned from *People ex rel. Devine v. Suburban Cook County Tuberculosis Sanitarium District*, 349 Ill. App. 3d 790, 798 n.3 (2004); *see also* (A 11). The note the appellate court referred to in *Devine* expressly states that the court did not find § 10(a) applicable to the facts of the case. *Devine*, 349 Ill. App. 3d at 798 n.3. The appellate court’s reliance on *Devine* was misplaced.

The appellate court’s “methods” versus “subject matter” argument has an inherent flaw: it creates a meaningless distinction between form and substance that has no place in the plain meaning of the Constitutional provision at issue in this litigation. The real holding in note 3 of *Devine* that is pertinent to this case is *Village of Lisle v. Village of Woodridge*, 192 Ill.App.3d 568, 577, 139 Ill.Dec. 623, 548 N.E.2d 1337, 1343 (1989) (holding that § 10(a) authorizes “municipalities to enter into cooperative agreements, but only to the extent that the agreement encompasses subject matter over which the municipalities already have authority” and does not grant municipalities the authority to enter into agreements which give the municipalities powers which they otherwise do not have.). The “methods” versus “subject matter” argument made by the appellate court misses the mark in that it tries to distinguish between the power of a municipality to perform a function within its limits and the power of a municipality to use § 10(a) as its

sole authority to take an action outside of its limits which it otherwise would not have the ability to do.

In order to make its opinion fit, the appellate court chose to focus on the defendants' ability to regulate their own water supplies (A 10). The Brotzes are not arguing that the municipalities and JCRW lacked the ability to regulate their own water needs. The Brotzes contend that Carlinville lacked the ability to form a private company to sell water to others. Nowhere has Carlinville or Alluvial cited any authority for a non-home rule municipality to start a private water company to sell water to others. They never demonstrated that they had authority over the subject matter.

What is most curious about this case is the appellate court's focus on the power to regulate water, and the decision to ignore the issue of whether Carlinville had statutory authority to form a private business to sell water to others. It is curious because appellate court already decided this issue in *Connelly*. As was stated above, *Connelly* concerned a challenge to Clark County's practice of making isolated sales to local municipalities and townships of its excess gravel from the county gravel pit. *Connelly*, 16 Ill. App.3d at 951-52. The Fourth District examined the facts, the proceedings of the 1970 Constitutional Convention, and the statutory authority for the County, and found that Clark County lacked such authority in the absence of an intergovernmental agreement or other joint venture allocating the responsibilities amongst the parties. *Id.* The court held that Clark County was acting in excess of its Constitutional and statutory authority where it had no express authority to sell gravel to others on a transactional basis. *Id.* *Connelly* stands for the proposition that even where powers are expressly authorized by law or constitutional grant, the exercise of those powers cannot extend to related functions that

are themselves not expressly authorized by statute. *Connelly*, 16 Ill. App. 3d at 947.

The facts of this case are strikingly similar to those of *Connelly*. Carlinville has created a more sophisticated scheme, but it is the same underlying issue remains. Carlinville has attempted to create a private company to sell products to others. Nowhere does the Illinois Constitution or any statute provide Carlinville with the authority to create such a private company. This is not a “method” of accomplishing a goal enumerated by law. Carlinville is trying to give itself a new power, the ability to create a private business to sell goods to others outside its boundaries. The Court should not allow Carlinville to take such a power for itself.

B. The appellate court’s ruling ignores the intent of the framers of Art. VII, § 10(a) of the 1970 Constitution.

The appellate court also ignored the intent of the framers of the 1970 Constitution when citing the record of proceedings as part of its opinion. The appellate court cited 5 Proceedings 4165 for the proposition that the convention reversed Dillon’s Rule in the third reading of Art. VII, § 10(a) by changing the language from “when authorized by law” to in any manner not prohibited by law or ordinance.” Neither Carlinville, Alluvial, nor the Fourth District cited any authority from the Constitutional Convention for the proposition that Carlinville could create a private company to sell goods to others outside Carlinville’s boundaries. The fact of the matter is that no such authority exists. The minutes of the Constitutional Convention make clear that the framers intended to widen the scope of authority municipalities have in the context of carrying out their functions, but nowhere does it support the notion that new powers are created.

The Fourth District’s opinion in *Williamsville* is illustrative on this point. *Williamsville* concerns the Village of Sherman’s attempt to back out of an agreement

regarding the purchase of water from Springfield. *Williamsville*, 106 Ill.App.3d at 178. The Fourth District found in *Williamsville* that both Sherman and Williamsville had the power to regulate their water functions, and that they also had the ability, and in fact did enter into an intergovernmental agreement concerning the sharing of water supplies they purchased from Springfield for joint use. *Id.* Using fundamental principles of contract law, and the fact that both municipalities had authority over the subject matter of the intergovernmental agreement, the Fourth District found that Sherman could not back out simply because the General Assembly did not expressly authorize the way Sherman and Williamsville went about solving their joint problem. *Id.*, 106 Ill.App.3d at 181.

The Court should uphold the First District's holding in *Lisle*, as well as the Fourth District's holding in *Connelly*, and reject the Fourth District's erroneous holding in the case below that the record of proceedings of the 1970 Constitutional Convention Art. VII, § 10(a) somehow stands for the proposition that the framers intended to let municipalities use § 10(a) to perform functions outside the scope of their authority like starting a private business to sell goods to entities outside their jurisdiction.

C. The opinion below ignores well settled principles of statutory construction.

This Court has recently reminded practitioners of its' guidance on how to interpret Illinois statutes. See *In re Marriage of Goesel*, 2017 IL 122046, ¶ 13. These principles apply equally to interpreting provisions of the Illinois Constitution. *Id.* The primary goal of statutory construction, to which all other rules are subordinate, is to ascertain and give effect to the intention of the legislature. *Id.* The best indication of legislative intent is the statutory language, which must be given its plain and ordinary meaning. *Id.* It is improper for a court to depart from the plain statutory language by reading into the

statute exceptions, limitations, or conditions that conflict with the clearly expressed legislative intent. *Id.* Where statutory language is clear and unambiguous, it will be given effect without resort to other aids of construction. *Id.*

Citizens cannot pick and choose which statutes apply to them. *Fischetti v. Village of Schaumburg*, 2012 IL App (1st) 111008. Statutes must be read together and construed in a harmonious fashion. *Knolls Condominium Association v. Harms*, 202 Ill. 2d 450, 458–59 (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.”). When a court interprets the Constitution, 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; *Rottman v. Illinois State Officers Electoral Board*, 2018 IL App (1st) 180234, ¶ 14. 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 (1990). In the unlikely event, however, that a general statute and specific statute on the same subject are conflicting, the specific language will control. *Id.* at 254.

If the meaning of a statute is unclear from the statutory language, the court may consider the purpose behind the law and the evils the law was designed to remedy. *Gruszczka v. Illinois Workers’ Compensation Commission*, 2013 IL 114212, ¶ 12. A statute is ambiguous when it is capable of being understood by reasonably well-informed persons in two or more different senses. *Solon v. Midwest Medical Records Association*, 236 Ill. 2d 433, 440 (2010). In determining legislative intent, the court may also consider

the consequences that would result from construing the statute one way or the other, and in doing so, the court must presume that the legislature did not intend absurd, inconvenient, or unjust consequences. *Id.* at 441.

The word “ambiguous” does not appear anywhere in Alluvial or Carlinville’s appellate briefs or in their arguments at the trial court level. Neither Carlinville nor Alluvial make any attempt to explain why the plain words of Article VII, Section 10(a) of the Illinois Constitution are ambiguous as applied to the facts of this case. Instead, Alluvial and Carlinville delve headfirst into law review articles and transcripts from the Sixth Illinois Constitutional Convention to make their case. Neither Carlinville nor Alluvial even attempted to clear the first hurdle of statutory construction; i.e. proving an ambiguity.

1. *The Court Should Adopt Judge Troemper’s Thoughtful Analysis of Art. VII, § 10(a).*

Judge Troemper’s thoughtful analysis of the plain language of Art. VII, § 10(a) in her July 7, 2020 Order is instructive. Judge Troemper’s analysis is quite simple. She reasoned in page 10 of her July 7, 2020 Order that:

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 matter not prohibited by law or by ordinance*. In addition, the City of Carlinville may contract and otherwise associate with Jersey County Rural Water, Co *in any manner not prohibited by law or ordinance*.

(A 25-26). Judge Troemper went on to explain that:

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” . . . is misplaced . . .

(A 26-27).

Judge Troemper’s analysis of the plain, ordinary meaning of the two sentences in Art. VII, § 10(a) at issue in this litigation is simple, consistent with principles of statutory construction, and, more importantly, makes complete sense. Art. VII, § 10(a) of the Illinois Constitution contains two different sentences, each worded slightly different, to describe the ways in which government units may interact amongst themselves and with non-government units. The interpretation of Carlinville, Alluvial and the appellate court that the two different sentences mean exactly the same thing, i.e. that a municipality can do whatever it wants so long as it is not expressly prohibited by law, renders the different wording of the second sentence in Art. VII, § 10(a) meaningless.

Judge Troemper’s interpretation gives rational meaning to the two different sentences. The word “or” is a conjunction which connotes a relationship between two different alternatives or possibilities. *Merriam-Webster Online*, <https://www.merriam-webster.com/dictionary/or> (Accessed 11/20/2020). The word “and” is a conjunction which indicates a connection or addition, especially of items within the same class or type. *Merriam-Webster Online*, <https://www.merriam-webster.com/dictionary/and> (Accessed 11/24/2020). Our ordinary understanding of the English language informs us that the first sentence using “or” means that a municipality has the option of choosing to enter into a contract or otherwise associate with another government unit. However, the use of the word “and” in the second sentence of Art. VII, § 10(a) restricts a municipality

by requiring it to have both a contract and association when acting cooperatively with non-government entities like private corporations and individuals. This is just common sense.

What is also common sense is that the framers of the 1970 Constitution might deliberately choose to include two different sentences with two different standards when describing a non-home rule municipality's ability to act cooperatively with other government units versus private entities. They were clearly and unambiguously trying to restrict a municipality's authority regarding private entities. We can speculate why. Was it an issue of transparency, an issue of accountability, or an issue of public policy? Luckily, we do not need to delve into the underlying reasons, as the plain, unambiguous language of Illinois Constitution, Art. VII, § 10(a) speaks for itself and is rational.

2. *The Maxim "Expressio Unius est Exclusio Alterius" also Restricts Carlinville's Options.*

Throughout this case, the Brotzes have argued that the Legislature's inclusion of multiple ways in which a non-home rule municipality can solve its problems preclude it from choosing a non-enumerated one. The Brotzes ask the Supreme Court to consider their argument regarding the interpretation of Art. VII, § 10(a) which takes a different path from Judge Troemper's rationale but is equally consistent with the principles of statutory interpretation and reaches the same logical conclusion.

Another principle of statutory construction in Illinois law is the maxim, *expressio unius est exclusio alterius*. The inclusion of one or more options excludes other omitted ones. *See Shakman v. Department of Revenue*, 2019 IL App (1st) 182197. This is the lesson we all learned as children. If a child asks a parent for a snack and the parent tells the child they can have some carrots from the fridge, that means that the child cannot take

a cookie from the counter instead. When the legislature includes particular language in one section of a statute but omits it in another section, the court must presume that the legislature acted intentionally and purposely in the inclusion or exclusion, and that the legislature intended different meanings and results. *People v. Clark*, 2019 IL 122891. Similarly, where a statute lists the things to which it refers, there is an inference that all omissions should be understood as exclusions, despite the lack of any negative words of limitation. *In re Estate of Lewy*, 2018 IL App (1st) 172552.

In the instant case, the Illinois General Assembly has provided Carlinville many different ways to solve its water supply problems, such as entering into an intergovernmental agreement or contract, forming a Municipal Joint Action Water Agency, using its powers under the Municipal Code, entering into contracts with a private company after approval by the Carlinville City Council, etc. They chose none of those paths.

The Brotzes are not arguing that Carlinville lacks the ability to contract and work with others to solve the water supply problem. They simply want Carlinville to follow the law. The Illinois Legislature has taken great pains to set out multiple ways in which Carlinville and other local stakeholders can go about solving this issue. However, Carlinville was confined to its statutorily authorized methods. The Court should apply the maxim *expressio unius est exclusio alterius* in this situation.

Statutes must be read together and construed in a harmonious fashion. *Knolls Condo. Association v. Harms*, 202 Ill. 2d 450, 458-59 (2002). By including many ways Carlinville could solve its problem, the Legislature denied Carlinville the option to

choose a method that was not enumerated in law. The Court should not allow Carlinville to escape the confines of Illinois law just because Carlinville likes the way it chose better.

The Brotzes have relied on a different principle of statutory construction when analyzing Art. VII, § 10(a) of the Constitution, but they reach the same logical conclusion as Judge Troemper. Carlinville lacked the authority to take the actions it did in participating in the formation, funding, and operation of Alluvial. There is no need to resort to methods of statutory construction for ambiguous language when the plain, ordinary meaning of the text is clearly ascertainable from the words themselves. The Court should reject the statutory construction argument set forth by Alluvial, Carlinville, and the appellate court regarding Art. VII, § 10(a) because their interpretation fails to follow the rules set forth by this Court and is a tortured interpretation of the English language that renders the two different sentences superfluous.

CONCLUSION

For the foregoing reasons, the Brotzes respectfully request that this Court grant their Petition and reverse the Fourth District's March 2, 2021 ruling.

Dated this 6th day of April, 2021.

RESPECTFULLY SUBMITTED,

CAMILLE MAYFIELD COOPER
BROTZE and WAYNE BROZE,
Petitioners,

By: /s/ Jacob N. Smallhorn
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CERTIFICATE OF COMPLIANCE

I certify that this Petition for Leave to Appeal conforms to the requirements of Rules 341(a) and (b). The length of this Petition, excluding the pages in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 5,225 words.

/s/ Jacob N. Smallhorn
Jacob N. Smallhorn, Smallhorn Law LLC,
Counsel for Appellees

CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. The undersigned, being first duly sworn on oath, deposes and says that he electronically filed with the Clerk at <https://illinois.tylerhost.net/ofswweb> e-filing system and attached true copies and forwarded via email to all parties, or their attorneys, to the following addresses, on the 6th day of April, 2021.

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PETITIONER’S APPENDIX

Fourth District Appellate Court’s March 2, 2021 Opinion..... A-1 – A-15

Order Re: Plaintiffs’ and Defendant’s Motions for Summary
Judgment Pursuant to 735 ILCS 5/2-1005..... A-16 – A-32

Second Amended Complaint for Mandamus A-33 – A-71

2021 IL App (4th) 200369
 NOS. 4-20-0369, 4-20-0383, 4-20-0384 cons.

FILED
 March 2, 2021
 Carla Bender
 4th District Appellate
 Court, IL

IN THE APPELLATE COURT
 OF ILLINOIS
 FOURTH DISTRICT

CAMILLE MAYFIELD COOPER BROTZE and	)	Appeal from the
WAYNE BROTZE, Husband and Wife,	)	Circuit Court of
Plaintiffs-Appellees,	)	Macoupin County
v.	)	Nos. 18L5
THE CITY OF CARLINVILLE, ILLINOIS, a	)	19MR92
Municipal Corporation; THE VILLAGE OF)	
DORCHESTER, ILLINOIS, a Municipal Corporation;)	
JERSEY COUNTY RURAL WATER COMPANY,)	
INC., an Illinois Not-For-Profit Corporation; and)	
ILLINOIS ALLUVIAL REGIONAL WATER)	
COMPANY, INC., an Illinois Not-For-Profit)	
Corporation,)	
Defendants)	
)	
(Illinois Alluvial Regional Water Company, Inc.,)	
Defendant-Appellant).)	
)	
CAMILLE MAYFIELD COOPER BROTZE and)	
WAYNE BROTZE, Husband and Wife,	)	Honorable
Plaintiffs-Appellees,	)	April Troemper,
v.	)	Judge Presiding.
THE CITY OF CARLINVILLE, ILLINOIS, a)	
Municipal Corporation,)	
Defendant-Appellant.)	

JUSTICE STEIGMANN delivered the judgment of the court, with opinion.
 Justices Turner and Cavanagh concurred in the judgment and opinion.

OPINION

¶ 1 For several years, the City of Carlinville, Illinois (Carlinville), has been urgently searching for a sustainable, cost-effective, and long-term supply of potable water. In an attempt to

solve its problem, Carlinville joined with the nearby Village of Dorchester, Illinois (Dorchester), and Jersey County Rural Water Company (Jersey Water), a not-for-profit corporation, to form another not-for-profit corporation: Illinois Alluvial Regional Water Company (Alluvial). Once formed, Alluvial received approval for tens of millions of dollars in grants and loans from federal agencies to build the infrastructure necessary to provide its members (Carlinville, Dorchester, and Jersey Water) with potable water.

¶ 2 In these consolidated cases, Carlinville residents Camille Mayfield Cooper Brotze and Wayne Brotze (the Brotzes), contend that Carlinville may not lawfully form and participate in Alluvial. The trial court agreed, entered summary judgment in favor of the Brotzes, and concluded that Alluvial was an illegal company. We disagree and reverse.

¶ 3 I. BACKGROUND

¶ 4 The procedural history of this case is complicated and mostly irrelevant to our resolution of the issues on appeal. Accordingly, we set forth only the information necessary to understand the procedural context in which this case arrives before this court.

¶ 5 A. The Complaint (Macoupin County Case No. 18-L-5)

¶ 6 In February 2018, the Brotzes filed a complaint against defendants, Carlinville, Dorchester, Jersey Water, and Alluvial. The complaint stated that (1) Alluvial was incorporated in December 2017 and its sole members were Carlinville, Dorchester, and Jersey Water and (2) Alluvial's purpose was to use an underground aquifer to develop a supply of potable water for the surrounding counties. The complaint alleged that (1) Alluvial was not formed pursuant to any of the statutory methods provided by law for municipalities to create a water supply and (2) none of the defendants had entered into any contracts or intergovernmental agreements prior to forming Alluvial.

¶ 7 The complaint further alleged that Carlinville had received grant money from a federal agency for the purpose of exploring engineering options to develop a “viable water supply, treatment, and transmission system” to serve multiple counties. Carlinville had appropriated its own funds as well as this grant money for use by Alluvial, while Dorchester provided its own funds to Alluvial. The complaint asserted that Carlinville and Dorchester had no constitutional or statutory authority to join with Jersey Water to form another private company to solve their water problems or to fund such a private company. Further, the Brotzes claimed Alluvial was formed to “circumvent Illinois Sunshine laws like the Open Meetings Act.” The Brotzes sought a declaratory judgment that Carlinville and Dorchester could not participate in the formation or continued funding and operation of Alluvial.

¶ 8 In April and May 2018, Carlinville, Dorchester, and Jersey Water filed motions to dismiss, asserting, in relevant part, that the Brotzes lacked standing to bring their claims.

¶ 9 In May 2018, Alluvial filed an answer to the complaint in which it denied that Carlinville, Dorchester, and Jersey Water lacked the power to form Alluvial. Alluvial further requested a declaratory judgment in its favor that it was properly formed pursuant to section 10(a) of article VII of the Illinois Constitution. Ill. Const. 1970, art. VII, § 10(a). Alluvial also alleged that the Brotzes lacked standing to sue Alluvial because (1) Alluvial was a private company not subject to public access and disclosure laws and (2) the Brotzes had no relationship with Alluvial. That same month, Alluvial filed a motion for summary judgment based on its argument that section 10(a) authorized Alluvial’s formation.

¶ 10 In June and July 2018, the parties fully briefed the pending dispositive motions, and in August 2018, the trial court conducted a hearing before taking the motions under advisement. In January 2019, the court entered a written order in which it concluded that the Brotzes lacked

standing to bring suit against Dorchester and Jersey Water and dismissed the claims against them. The court also dismissed the claims against Alluvial for lack of standing—despite Alluvial not filing such a motion—because Alluvial had raised standing in its answer and had argued the Brotzes lacked standing during oral arguments. The court denied Alluvial’s motion for summary judgment as moot.

¶ 11 Regarding Carlinville, the trial court concluded that the Brotzes had standing to sue and permitted the Brotzes to file an amended complaint.

¶ 12 B. The Amended Complaint (Macoupin County Case No. 19-MR-92)

¶ 13 In July 2019, the Brotzes filed an amended complaint seeking *mandamus*. The case was given an “MR” case number, but the court subsequently consolidated the two suits (that is, it consolidated the MR case with the previously filed L case). The amended complaint named only Carlinville as a defendant and contained many of the same allegations explaining the formation of Alluvial as the initial complaint. The amended complaint further alleged that Carlinville did not have the authority under the Illinois Constitution or state law to form Alluvial and its doing so was an unlawful attempt to avoid transparency, public oversight, and statutory duties, such as those imposed by the Open Meetings Act. The Brotzes contended that without a *mandamus* order they would have no ability to “challenge Carlinville’s abuse of authority regarding *** the creation, funding, and operation of Illinois Alluvial.”

¶ 14 In April 2020, Carlinville filed a motion for summary judgment. Relevant to this appeal, Carlinville asserted that section 10(a) of article VII of the Illinois Constitution granted it the authority to “contract and otherwise associate with *** corporations in any manner not prohibited by law or ordinance.” Ill. Const. 1970, art. VII, § 10(a). Because the plain meaning of the term “associate” included joining together with another, Carlinville asserted that it was

authorized to join with Dorchester and Jersey Water to form Alluvial so long as such action was not prohibited by law. Carlinville also asserted that (1) the Illinois Municipal Code granted Carlinville and Dorchester the authority to construct and maintain facilities for supplying potable water (see 65 ILCS 5/11-125-1 *et seq.* (West 2016)) and (2) the Brotzes had not pointed to any statute or ordinance that prohibited Carlinville's actions.

¶ 15 Later in April 2020, the Brotzes filed a cross-motion for summary judgment, arguing that section 7 of article VII, when read in conjunction with section 10 and applicable state laws, demonstrated that Carlinville could exercise “only powers granted to [it] by law.” Ill. Const. 1970, art. VII, § 7. The Brotzes contended that section 7 was the embodiment of “Dillon’s Rule,” which required municipal powers to be construed strictly against the municipality (see *Pesticide Public Policy Foundation v. Village of Wauconda*, 117 Ill. 2d 107, 111-12, 510 N.E.2d 858, 860-61 (1987)), and section 10 did not grant Carlinville any new power that was not expressly granted by law. The Brotzes maintained that the legislature had enumerated several different statutory methods by which Carlinville could address its water problems. Because Carlinville attempted to use a method not expressly authorized by statute, Dillon’s Rule applied and prevented Carlinville from joining with Dorchester and Jersey Water to form Alluvial.

¶ 16 In addition, the Brotzes explained that Carlinville had not demonstrated that it complied with section 10(a) because “[t]his case does not concern an intergovernmental agreement or even a contract of any kind.” In particular, Alluvial was not incorporated until December 2017. Accordingly, “[t]here was no entity for Carlinville to associate with or contract with when [Carlinville] took its vote to participate in and fund Illinois Alluvial in October 2017.”

¶ 17 C. The Trial Court’s Ruling

¶ 18 In June 2020, the trial court conducted a hearing on the parties’ motions for

summary judgment, and in July 2020, the trial court entered a written order granting summary judgment in favor of the Brotzes. The court identified “[t]he only issue *** [as] 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.” The court examined the language of section 10(a) and emphasized that the first sentence of that section stated that units of local government “may contract *or* otherwise associate among themselves,” while the second sentence stated that units of local government “may contract *and* otherwise associate with” private parties. (Emphases in original.) The court reasoned that the use of a different word in each sentence meant the drafters intended a different result and the court could not interpret the provision in a manner that rendered any word superfluous.

¶ 19 The trial court determined that units of government “may choose between a contract or another form of association when dealing with other units of local government.” But, when dealing with private corporations, the court concluded “there must be both a contract and a type of association for the constitutional requirement to be fulfilled.” The court noted that Carlinville, Dorchester, and Jersey Water never entered into any contract at all, including one to form Alluvial. The court maintained that Dillon’s Rule, as expressed in section 7, continued to apply and Carlinville was not allowed to create a new method of obtaining water when the legislature provided multiple options for the same by statute. The court concluded that even though Carlinville “could have *associated* with *** Dorchester *and contracted* with [Jersey Water] for purposes of creating a potable water supply,” those three entities could not “create a brand new, private not-for-profit corporation for purposes of ultimately selling water without public input” because such action was “inconsistent with the Illinois Constitution” and “was an attempt to circumvent the [legislature’s] grant of authority.” (Emphases in original.) Because Carlinville acted without

authorization, the court declared Alluvial was “a void corporation” and entered summary judgment in favor of the Brotzes.

¶ 20 D. The Present Appeals

¶ 21 In August 2020, Carlinville filed a notice of appeal, and within 10 days, Alluvial filed a notice to appeal pursuant to Illinois Supreme Court Rule 303(a)(3) (eff. July 1, 2017) in both the MR case and the L case. Due to the unusual procedural posture in the trial court, three separate appeals were docketed in this court. Alluvial moved to consolidate the cases, but because of the absence of a record on appeal at that time, this court consolidated only Alluvial’s appeals (Macoupin County case Nos. 4-20-0383 and 4-20-0384) and invited counsel to move for consolidation with Carlinville’s appeal (Macoupin County case No. 4-20-0369) again after briefing. No such motion was filed.

¶ 22 In January and February 2021, this court conducted two separate oral arguments, one involving Alluvial and another involving Carlinville. Because our resolution of the central issue in these cases controls the result in each appeal, we now consolidate these cases on our own motion.

¶ 23 II. ANALYSIS

¶ 24 Carlinville and Alluvial appeal, arguing, in relevant part, (1) the trial court’s interpretation of section 10(a) was erroneous and (2) under the correct interpretation, they were entitled to summary judgment in their favor. We agree and reverse.

¶ 25 A. The Applicable Law and Standard of Review

¶ 26 1. *Summary Judgment*

¶ 27 Summary judgment is appropriate if “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.” 735 ILCS 5/2-1005(c) (West 2018). “When, as here, parties file cross-motions for summary judgment, they mutually agree that there are no genuine issues of material fact and that the case may be resolved as a matter of law.” *Iwan Ries & Co. v. City of Chicago*, 2019 IL 124469, ¶ 18, 160 N.E.3d 916. Issues involving statutory construction, the applicability and effect of constitutional provisions, and whether summary judgment should have been allowed in a case all present questions of law, which this court reviews *de novo*. *Hawthorne v. Village of Olympia Fields*, 204 Ill. 2d 243, 254-55, 790 N.E.2d 832, 840 (2003).

¶ 28

2. Interpretation of Constitutional Provisions

¶ 29

Resolution of this case requires an interpretation of two provisions of the Illinois Constitution pertaining to local government. “In construing a constitutional provision, our primary goal is to ascertain and give effect to the common understanding of the citizens who adopted it, and courts look first to the plain and generally understood meaning of the words used.” *Blanchard v. Berrios*, 2016 IL 120315, ¶ 16, 72 N.E.3d 309. “In addition, it is proper to consider constitutional language in light of the history and condition of the times, and the particular problem which the [constitutional] convention sought to address ***.” (Internal quotation marks omitted.) *Kanerva v. Weems*, 2014 IL 115811, ¶ 36, 13 N.E.3d 1228.

¶ 30

3. The Provisions at Issue

¶ 31

Section 7 of article VII states the following: “Counties and municipalities which are not home rule units shall have only powers granted to them by law and the powers [set forth in section 7].” Ill. Const. 1970, art. VII, § 7. The rule encompassed in section 7 is commonly called “Dillon’s Rule”—named after the nineteenth century jurist who popularized the rule—and stands for the proposition that municipalities cannot act unless they have a specific grant of authority

from the legislature. See *Village of Sherman v. Village of Williamsville*, 106 Ill. App. 3d 174, 179, 435 N.E.2d 548, 551 (1982). Prior to 1970, Illinois strictly applied Dillon’s Rule. See, *e.g.*, *Elsenau v. City of Chicago*, 334 Ill. 78, 81, 165 N.E. 129, 130 (1929).

¶ 32 In 1970, section 10 of article VII was added, which provides in pertinent part 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.” Ill. Const. 1970, art. VII, § 10(a).

¶ 33 B. This Case

¶ 34 This court has recognized that the delegates drafted section 10(a) with Dillon’s Rule in mind, or, more specifically, with *ending* Dillon’s Rule, at least in certain circumstances. See *Village of Sherman*, 106 Ill. App. 3d at 179 (“Article VII, section 10, eliminated the effect of ‘Dillon’s Rule’ in construing intergovernmental agreements.”); *Connelly v. County of Clark*, 16 Ill. App. 3d 947, 951, 307 N.E.2d 128, 131 (1973) (“Thus[,] Dillon’s Rule of strictly construing legislative grants of authority to local governmental units has been abrogated by section 10 *** when local governments voluntarily cooperate ***.”).

¶ 35 In *Sherman* and *Connelly*, this court reviewed the drafting process and report of proceedings to reach our conclusion. See *Village of Sherman*, 106 Ill. App. 3d at 178-79; *Connelly*,

16 Ill. App. 3d at 950-51. On first reading, the second sentence of section 10(a) was not present, and an amendment to add similar language was defeated by a tie vote. 4 Record of Proceedings, Sixth Illinois Constitutional Convention 3425-29 (hereinafter Proceedings); see also Joan G. Anderson & Ann Lousin, *From Bone Gap to Chicago: A History of the Local Government Article of the 1970 Illinois Constitution*, 9 J. Marshall J. Prac. & Proc. 697, 793 (1976). On second reading, the drafters amended that section to include the following, “Where authorized by law, units of local government and school districts may contract and otherwise associate with individuals, associations, and corporations.” 5 Proceedings 4165. However, on third reading, the drafters amended the second sentence to its present form—that is, the phrase “when authorized by law” was deleted and the phrase “in any manner not prohibited by law or by ordinance” was added. 5 Proceedings 4444-46. Thus, the interpretation advocated for by the Brotzes was present at the second reading, but the convention rejected that interpretation and replaced it with text that reverses Dillon’s Rule.

¶ 36 In this case, the Brotzes maintain that Dillon’s Rule is still applicable notwithstanding section 10. The Brotzes employ the canon of construction “*expressio unius*”—the expression of one is to the exclusion of others—to support their claim that Carlinville was only permitted to address its water problems in one of the five ways prescribed by statute. We disagree.

¶ 37 As we just explained, section 10(a) reverses Dillon’s Rule when municipalities enter into intergovernmental agreements to exercise the powers they are provided by law. Contrary to the Brotzes claims, the defendants’ interpretation of section 10(a) does not grant power over new subject matters. See *People ex rel. Devine v. Suburban Cook County Tuberculosis Sanitarium District*, 349 Ill. App. 3d 790, 798 n.3, 812 N.E.2d 679, 686 n.3 (2004) (explaining that contracts and associations under section 10(a) are limited to subject matters over which the municipality has

been granted authority). Instead, section 10(a) expands the *methods* by which units of local government may exercise the powers granted to them by law—namely, by contracting and otherwise associating with other public and private entities “in any manner *not prohibited* by law or by ordinance.” (Emphasis added.) Ill. Const. 1970, art. VII, § 10(a).

¶ 38 All parties agree that Carlinville could build and maintain a water supply, and the same is true of every other defendant. See 65 ILCS 5/11-124-1 to 11-126-7 (West 2016); 65 ILCS 5/11-125-1 *et seq.* (West 2016) (granting municipalities the authority to construct wells, reservoirs, and waterworks); see also 805 ILCS 105/103.05(a)(23) (West 2016) (permitting not-for-profit corporations to be organized for the purpose of owning and operating water supply facilities on a mutual cooperative basis). The Brotzes do not point to any statute or ordinance that prohibits Carlinville from joining together with other municipalities and nonprofits, each of which has the power to do individually what they wish to do collectively, to create a company to build and maintain a water supply for its members. Because the Brotzes cannot do so, we conclude that the trial court should have granted Carlinville’s motion for summary judgment.

¶ 39 As an alternative, the Brotzes attempt to defend the trial court’s reading of section 10(a). The court emphasized that when dealing with public entities, section 10(a) states, “may contract *or* otherwise associate,” whereas when discussing private entities, section 10(a) states, “may contract *and* otherwise associate.” (Emphases added.) See Ill. Const. 1970, art. VII, § 10(a). Because the constitution uses the conjunction “and” instead of “or,” the court concluded that Carlinville was required to enter into a contract *and* associate with private entities. Carlinville conceded that it had not entered into any contracts, and the court found the formation of Alluvial unconstitutional. (We note that Carlinville argued that the articles of incorporation and bylaws of Alluvial were such contracts, but the court rejected this assertion. We need not address this

argument on appeal.)

¶ 40 The trial court’s reading of section 10(a) is simply incorrect. We acknowledge that “and” is frequently used in statutes to signify that all of the listed factors must be present. See, *e.g.*, *Soh v. Target Marketing Systems, Inc.*, 353 Ill. App. 3d 126, 131, 817 N.E.2d 1105, 1109 (2004) (use of “and” required all factors listed in section 2 of the Wage Act to be present). However, “and” is also frequently used as a coordinating conjunction to “join[] together words or word groups of equal grammatical rank.” Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/coordinating%20conjunction> (last visited Feb. 26, 2021) [<https://perma.cc/797D-PLHZ>]. This usage is why the Illinois Supreme Court has repeatedly “recognized that ‘and’ is often used interchangeably with ‘or,’ the meaning being determined by the context.” *County of Du Page v. Illinois Labor Relations Board*, 231 Ill. 2d 593, 606, 900 N.E.2d 1095, 1102 (2008). Further, such usage is most logical considering the context in this case that (1) “and” follows the word “may,” (2) “and” is used to link “contract” with “*otherwise* associate,” and (3) the sentence ends with the phrase “in *any manner* not prohibited by law or by ordinance.” (Emphases added.) See Ill. Const. 1970, art. VII, § 10(a).

¶ 41 For example, imagine a family visiting a public lake for recreation. Upon entering, a sign states in bold lettering, “Visitors to the lake may boat, fish, swim, and otherwise enjoy the lake in any manner not prohibited by park rules.” No reasonable speaker of English would understand the sign to say visitors may swim but only if they also boat and fish and enjoy themselves. To do so, one would have to ignore the words “may,” “otherwise,” and “in any manner.” With the addition of those words, every reader would know that visitors may do (1) any one of those activities, (2) all of them, (3) any other activity so long as it is not prohibited, or (4) any combination thereof. Likewise, in section 10(a), units of local government may contract,

associate, or contract and associate with private entities. By using a strict interpretation of “and,” the trial court rendered the words “otherwise” and “in any manner” superfluous.

¶ 42 Our understanding of the plain language is confirmed by our prior cases that examined the constitutional debates. See *Village of Sherman*, 106 Ill. App. 3d at 178-79; *Connelly*, 16 Ill. App. 3d at 950-51. The problem the convention was attempting to solve was that non-home-rule units of government had to get legislative approval before taking action to address local government problems, which led to delay and awkward workarounds. *Connelly*, 16 Ill. App. 3d at 957 (Craven, P.J., concurring in part and dissenting in part). The delegates were eager to remove this barrier so that units of local government at all levels could cooperate and associate to address problems without legislative authorization. *Id.* at 950-51 (majority opinion). This is why the language “in any manner not prohibited by law” was employed. (Internal quotation marks omitted.) *Id.* at 950. The clear purpose of section 10 was to allow local governments “maximum flexibility” to address local issues (internal quotation marks omitted) (*id.*) and to use any method “unless the General Assembly says you can’t” (internal quotation marks omitted) (*Village of Sherman*, 106 Ill. App. 3d at 179). The Brotzes offer no justification whatsoever for limiting this clear rationale from our cases to cooperation only between units of local government.

¶ 43 For the reasons stated, we conclude that the trial court erred by granting summary judgment in favor of the Brotzes and denying summary judgment for Carlinville. Accordingly, we reverse the trial court’s judgment and remand the case with instructions to enter summary judgment in favor of Carlinville.

¶ 44 Prior to briefing, Alluvial filed a motion to strike, asking this court to strike the portion of the trial court’s order that declared Alluvial a void corporation. We took that motion with the case and now deny it as moot. Because we conclude that nothing prohibited defendants

from forming Alluvial, our reversal of the trial court's judgment necessarily includes a determination that Alluvial is not a void company. As part of our directions, on remand, the trial court shall vacate its prior order, enter summary judgment in favor of Carlinville consistent with the reasoning of this opinion, and make clear that Alluvial may continue operating as a valid corporation.

¶ 45

III. CONCLUSION

¶ 46 For the reasons stated, we reverse the trial court's judgment and remand the case with directions for the trial court to (1) vacate its July 7, 2020, judgment in its entirety, (2) enter summary judgment in favor of Carlinville, and (3) as part of that judgment, make clear that Alluvial may continue to operate as a valid corporation.

¶ 47

Reversed and remanded with directions.

No. 4-20-0369

Cite as: *Brotze v. City of Carlinville*, 2021 IL App (4th) 200369

Decision Under Review: Appeal from the Circuit Court of Macoupin County, Nos. 18-L-5, 19-MR-92; the Hon. April Troemper, Judge, presiding.

**Attorneys
for
Appellant:** David M. Foreman, of Foreman & Kessler, Ltd., of Salem, for appellant Illinois Alluvial Regional Water Company, Inc.

John M. Gabala, of Giffin, Winning, Cohen & Bodewes, P.C., of Springfield, and Dan O'Brien, of Carlinville, for other appellant.

**Attorneys
for
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Amicus Curiae: Tracy A. Willenborg and Kara J. Wade, of Taylor Law Offices, P.C., of Effingham, for *amicus curiae* EJ Water Cooperative, Inc.

COPY**FILED**

JUL 07 2020

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

De Rose
Clerk of the Circuit Court
Macoupin County, Illinois

CAMILLE MAYFIELD COOPER BROTZ,)
And WAYNE BROTZ, 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 agreement¹ 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.

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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

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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.

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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?"

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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?

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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

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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. McGuire Woods LLP*, 2015 IL 118652, ¶ 11 (quoting 735 ILCS 5/2-1005(c). “Where the parties file cross-Motions

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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.

II. 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

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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

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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.

Rajterowski, 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 conclusion². 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).

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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

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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

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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

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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

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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 law³.

“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.

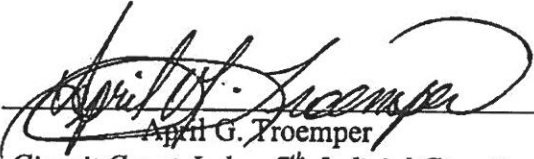
³ See case law cited by Plaintiffs on pp. 8 and 9 in their Motion for Summary Judgment, filed April 27, 2020.

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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

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

CAMILLE MAYFIELD COOPER BROTZE,)	
and WAYNE BROTZE, husband and wife,)	
)	
Plaintiffs,)	
)	
v.	)	No. 2019MR92
)	
CITY OF CARLINVILLE, ILLINOIS, a)	
Municipal Corporation,)	
)	
Defendant.)	

SECOND AMENDED COMPLAINT
(Mandamus)

Now come the Plaintiffs, CAMILLE MAYFIELD COOPER BROTZE and WAYNE BROTZE, husband and wife, by and through JACOB N. SMALLHORN of SMALLHORN LAW LLC, their attorneys, and in support of their SECOND AMENDED COMPLAINT for a Writ of Mandamus to be issued against the Defendant, CITY OF CARLINVILLE, ILLINOIS, a Municipal Corporation, allege as follows:

1. Plaintiffs, CAMILLE MAYFIELD COOPER BROTZE and WAYNE BROTZE (collectively the "Brotzes"), husband and wife, are individuals whom reside in the City of Carlinville, Macoupin County, Illinois.
2. Defendant, CITY OF CARLINVILLE, ILLINOIS ("Carlinville"), is a non-home rule, Municipal Corporation organized and existing under the Laws of the State of Illinois, situated in Macoupin County, Illinois.
3. The Brotzes' residence is connected to, and the Brotzes regularly use Carlinville's municipal water supply.

4. On or about January 26, 2016, Carlinville applied for a grant from the United States Department of Agriculture's ("USDA") Water and Waste System Grant Program for preliminary engineering on options for developing a viable water supply, treatment, and transmission system to serve a "Regional Water Commission" in the Greene, Jersey, and Macoupin Counties in Central Illinois. See p. 2 of the Grant Application which is attached as Exhibit A.

5. On March 8, 2016, the USDA entered into a Grant Agreement with Carlinville ("Grant Agreement"), awarding Carlinville \$30,000 for project development costs associated with the project detailed in the grant application (Exhibit A). A copy of the fully executed Grant Agreement is attached as Exhibit B.

6. Upon information and belief, at some point after March 8, 2016, representatives of Carlinville City Government had discussions with representatives of the Village of Dorchester, Illinois, Jersey County Rural Water Company, Inc., and other local municipalities and entities regarding the formation of a private, not-for-profit corporation to service the region's water supply.

7. On November 3, 2017, representatives of the Carlinville City Government, Jersey County Rural Water Company, Inc., and the Village of Dorchester created Bylaws for a private, not-for-profit corporation known as Illinois Alluvial Regional Water Company, Inc. ("Illinois Alluvial"), which provides that Illinois Alluvial's governing board will consist of one person from each municipality or other entity that opts into the private company. The Bylaws for Illinois Alluvial are attached as Exhibit C.

8. On December 5, 2017, representatives of the Carlinville City Government, Jersey County Rural Water Company, Inc., and the Village of Dorchester filed with the Illinois

Secretary of State Articles of Incorporation for Illinois Alluvial. The Articles of Incorporation for Illinois Alluvial are attached as Exhibit D.

9. On October 2, 2017, before Illinois Alluvial was incorporated or Bylaws were adopted, at a regularly held meeting of the Carlinville City Council, the Aldermen voted to grant “Alderman Campbell the power to act and appropriate funds as representative of Carlinville” to Illinois Alluvial. A copy of the October 2, 2017 Carlinville City Council Meeting Minutes is attached hereto as Exhibit E.

10. Illinois Alluvial is not a “Public Water District” under the Public Water District Act, 70 ILCS 3705/0.01 *et seq.*; it is not authorized under the Water Authorities Act, 70 ILCS 3715/0.01 *et seq.*; it is not a “Water Commission” as that term is identified in the Water Commission Act of 1985, 70 ILCS 3720/0.001 *et seq.*; 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.*

11. As residents of Carlinville, the Brotzes have a right to expect that their local government will conduct itself with transparency and in accordance with the provisions of the Illinois Open Meetings Act, 5 ILCS 120/1 *et seq.*, among other accountability laws.

12. The Illinois Open Meetings Act, 5/120/3(a), includes a private right to initiate a cause of action against a municipality for violations of the Act.

13. It is a well settled principle of Illinois Law that non-home rule municipal corporations are limited in their authority to contract to those areas in which specific statutory authority is given or can reasonably be inferred, *Eastern Illinois State Normal School v. City of*

Charleston, 271 Ill. 602, 111 N.E. 573 (1916), and intergovernmental agreements are likewise constitutionally limited to matters which are “not prohibited by law or by ordinance.” Illinois Constitution, Art. VII, Sec. 10.

14. The Illinois Municipal Code and other applicable statutes expressly identify the ways in which non-home rule municipalities like Carlinville may create a joint venture to solve their water supply problems. See the Statutes cited in allegation 10 hereinabove.

15. None of the statutorily prescribed methods described above in allegation 10 authorizes Carlinville to enter into a joint venture with another municipality and a private company to create another private company to solve its water problems.

16. Carlinville has no constitutional, statutory, or other legal authority to participate in the incorporation or funding of Illinois Alluvial; a private company purportedly owned and operated by two municipal corporations and a private company.

17. Illinois Alluvial claims that because it is a “private corporation,” it is exempt from the provisions of the Open Meetings Act. See the Notice of Criminal Trespass which Illinois Alluvial’s counsel sent to the Carlinville City Council on December 14, 2017, a copy of which is attached as Exhibit F.

18. By agreeing to participate in the formation, funding and operation of Illinois Alluvial in the way that they chose to do so, the Carlinville City Aldermen are not being transparent about their conduct of business and have circumvented the Brotzes right to know what decisions are being made about their water supply.

19. The Brotzes’ have a clear, affirmative right to expect their local government to conduct itself with transparency which is protectable pursuant to Illinois accountability statutes like the Open Meetings Act and the common law.

20. The Carlinville City Aldermen have a duty to act in accordance with Illinois Law, specifically within the strictures for non-home rule municipalities.

21. The Carlinville City Aldermen have the absolute authority to rescind their participation in Illinois Alluvial and chose another course of action to solve Carlinville's water needs which does not violate Illinois Law.

22. Without the issuance of a Writ of Mandamus, the Brotzes would have no other mechanism to challenge Carlinville's abuse of authority regarding Carlinville's participation in the creation, funding, and operation of Illinois Alluvial.

WHEREFORE, Plaintiffs, CAMILLE MAYFIELD COOPER BROTZE and WAYNE BROTZE, request that this Court 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, and for any such further relief the Court deems equitable and just.

Respectfully submitted this 22nd day of July, 2019.

Plaintiffs, CAMILLE MAYFIELD COOPER
BROTZE and WAYNE BROTZE, husband and
wife,

By: /s/ Jacob N. Smallhorn
Plaintiffs' Attorney

Jacob N. Smallhorn
Smallhorn Law LLC
609 Monroe Avenue
Charleston, Illinois 61920
T: 217-348-5253
F: 217-348-5258
jsmallhorn@smallhornlaw.com
Bar Number: 6307031

STATE OF CALIFORNIA)
COUNTY OF Alameda) SS.

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters that they certify as aforesaid that they verily believe the same to be true.

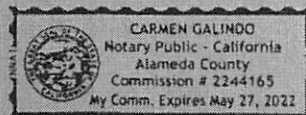
Camille Mayfield Cooper Brotze
CAMILLE MAYFIELD COOPER BROTZE

Wayne Brotze
WAYNE BROTZE

Subscribed and Sworn to before me this

10th day of July, 2019.

[Signature]
Notary Public



JURAT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

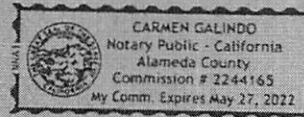
County of Alameda

Subscribed and sworn to (or affirmed) before me on this 10th day of July, 2019 by Camille Mayfield Cooper Brotze and Wayne Brotze.

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

[Signature]
Signature

(Seal)



OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

Second Amend
(Title or description of attached document)

Complaint
(Title or description of attached document continued)

Number of Pages 4 Document Date 7/10/19

Additional information

INSTRUCTIONS

The wording of all Jurats completed in California after January 1, 2015 must be in the form as set forth within this Jurat. There are no exceptions. If a Jurat to be completed does not follow this form, the notary must correct the verbiage by using a jurat stamp containing the correct wording or attaching a separate jurat form such as this one with does contain the proper wording. In addition, the notary must require an oath or affirmation from the document signer regarding the truthfulness of the contents of the document. The document must be signed AFTER the oath or affirmation. If the document was previously signed, it must be re-signed in front of the notary public during the jurat process.

- State and county information must be the state and county where the document signer(s) personally appeared before the notary public.
- Date of notarization must be the date the signer(s) personally appeared which must also be the same date the jurat process is completed.
- Print the name(s) of the document signer(s) who personally appear at the time of notarization.
- Signature of the notary public must match the signature on file with the office of the county clerk.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different jurat form.
 - ❖ Additional information is not required but could help to ensure this jurat is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
- Securely attach this document to the signed document with a staple.

APPLICATION FOR
FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application		2. DATE SUBMITTED	Applicant Identifier (b) (4)	
<input type="checkbox"/> Construction <input checked="" type="checkbox"/> Non-Construction		3. DATE RECEIVED BY STATE	State Application Identifier	
<input type="checkbox"/> Pre-application <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction		4. DATE RECEIVED BY FEDERAL AGENCY JAN 25 2016	Federal Identifier	
5. APPLICANT INFORMATION				
Legal Name:		Organizational Unit:		
City of Carlinville		Department:		
Organizational DUNS: (b) (4)		Division:		
Address:		Name and telephone number of person to be contacted on matters involving this application (give area code):		
Street:		Prefix:	First Name:	
550 N. Broad Street		Mr.	Tim	
City:		Middle Name		
Carlinville		Last Name		
County:		Hasara		
Macoupin		Suffix:		
State:		Email:		
IL		thasara@cityofcarlinville.com		
Zip Code		Phone Number (give area code)		
62626		217-854-4752		Fax Number (give area code)
Country:		217-854-4398		
USA		7. TYPE OF APPLICANT: (See back of form for Application Types)		
6. EMPLOYER IDENTIFICATION NUMBER (EIN): (b) (4)		C. Municipal		
8. TYPE OF APPLICATION: <input checked="" type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision If Revision, enter appropriate letter(s) in box(es) (See back of form for description of letters.)		Other (specify)		
Other (specify)		9. NAME OF FEDERAL AGENCY: U.S. Department of Agriculture - Rural Development		
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: TITLE (Name of Program): Water and Waste Disposal Systems for Rural Communities		11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT: Central Illinois Regional Water Supply - See attached project description		
12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.): City of Carlinville, portions of Macoupin, Jersey and Greene Counties		13. PROPOSED PROJECT		
Start Date: February 2016		Ending Date: July 2016		
16. ESTIMATED FUNDING:		14. CONGRESSIONAL DISTRICTS OF:		
a. Federal Pradevelopment Plan Grant	\$ 30,000	a. Applicant City of Carlinville		
b. Applicant	\$ 10,000	b. Project Regional Water System		
c. State	\$	16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?		
d. Local	\$	a. Yes. <input type="checkbox"/> THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON		
e. Other	\$	DATE:		
f. Program Income	\$	b. No. <input checked="" type="checkbox"/> PROGRAM IS NOT COVERED BY E. O. 12372		
g. TOTAL	\$ 40,000	<input type="checkbox"/> OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW		
18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.		17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?		
a. Authorized Representative		<input type="checkbox"/> Yes If "Yes" attach an explanation. <input checked="" type="checkbox"/> No		
Prefix Mrs.	First Name Deanna	Middle Name		
Last Name Demuzio	Suffix		c. Telephone Number (give area code)	
b. Title Mayor	217-854-4076		e. Date Signed	
d. Signature of Authorized Representative	10-22-2015			

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Standard Form 424 (Rev. 8-2003)
Prescribed by OMB Circular A-102

Exhibit A

A-41

Attachment for SF 424 Application Form, Item #11 (Descriptive Title of Applicant's Project):

A Preliminary Engineering Report to evaluate options to develop a viable water supply, treatment and transmission system to serve a Regional Water Commission in the Greene, Jersey and Macoupin Counties area of Central Illinois. The City of Carlinville is the lead entity until a water commission can be formed. Based on the collaboration with the City of Carlinville, City of Jerseyville, Jersey County Rural Water Company and Fosterburg Water District, the PER shall address a water system that will benefit the identified potential regional partners.

Water and Waste System Grant Agreement

United States Department of Agriculture

Rural Utilities Service

THIS AGREEMENT dated 6-3-8-2016, betweenCity of Carlinville

a public corporation organized and operating under

65 ILCS 5/2-1-1
(Authorizing Statute)

herein called "Grantee," and the United States of America acting through the Rural Utilities Service, Department of Agriculture, herein called "Grantor," WITNESSETH:

WHEREAS

Grantee has determined to undertake a project of acquisition, construction, enlargement, or capital improvement of a (water) (waste) system to serve the area under its jurisdiction at an estimated cost of \$ 40,000.00 and has duly authorized the undertaking of such project.

Grantee is able to finance not more than \$ 10,000.00 of the development costs through revenues, charges, taxes or assessments, or funds otherwise available to Grantee resulting in a reasonable user charge.

Said sum of \$ 10,000.00 has been committed to and by Grantee for such project development costs.

Grantor has agreed to grant the Grantee a sum not to exceed \$ 30,000.00 or 75.00 percent of said project development costs, whichever is the lesser, subject to the terms and conditions established by the Grantor. Provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the Conditions of the grant.

As a condition of this grant agreement, the Grantee assures and certifies that it is in compliance with and will comply in the course of the agreement with all applicable laws, regulations, Executive orders and other generally applicable requirements, including those set out in 7 CFR 3015.205(b), which hereby are incorporated into this agreement by reference, and such other statutory provisions as are specifically set forth herein.

NOW, THEREFORE, In consideration of said grant by Grantor to Grantee, to be made pursuant to Section 306(a) of The Consolidated Farm and Rural Development Act for the purpose only of defraying a part not to exceed 75.00 percent of the project development costs, as defined by applicable Rural Utilities Service instructions.

Grantee Agrees That Grantee Will:

A. Cause said project to be constructed within the total sums available to it, including said grant, in accordance with the project plans and specifications and any modifications thereof prepared by Grantee and approved by Grantor.

Exhibit B

A-43

B. Permit periodic inspection of the construction by a representative of Grantor during construction.

C. Manage, operate and maintain the system, including this project if less than the whole of said system, continuously in an efficient and economical manner.

D. Make the services of said system available within its capacity to all persons in Grantee's service area without discrimination as to race, color, religion, sex, national origin, age, marital status, or physical or mental handicap (possess capacity to enter into legal contract for services) at reasonable charges, including assessments, taxes, or fees in accordance with a schedule of such charges, whether for one or more classes of service, adopted by resolution dated 2-8-2016, as may be modified from time to time by Grantee. The initial rate schedule must be approved by Grantor. Thereafter, Grantee may make such modifications to the rate system as long as the rate schedule remains reasonable and nondiscriminatory.

E. Adjust its operating costs and service charges from time to time to provide for adequate operation and maintenance, emergency repair reserves, obsolescence reserves, debt service and debt service reserves.

F. Expand its system from time to time to meet reasonably anticipated growth or service requirements in the area within its jurisdiction.

G. Provide Grantor with such periodic reports as it may require and permit periodic inspection of its operations by a representative of the Grantor.

H. To execute any agreements required by Grantor which Grantee is legally authorized to execute. If any such agreement has been executed by Grantee as a result of a loan being made to Grantee by Grantor contemporaneously with the making of this grant, another agreement of the same type need not be executed in connection with this grant.

I. Upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and demand of Grantor, will repay to Grantor forthwith the original principal amount of the grant stated herein above with the interest at the rate of 5 percentum per annum from the date of the default. Default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Grant Agreement may be enforced by Grantor, at its option and without regard to prior waivers by it previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

J. Return immediately to Grantor, as required by the regulations of Grantor, any grant funds actually advanced and not needed by Grantee for approved purposes.

K. Use the real property including land, land improvements, structures, and appurtenances thereto, for authorized purposes of the grant as long as needed.

1. Title to real property shall vest in the recipient subject to the condition that the Grantee shall use the real property for the authorized purpose of the original grant as long as needed.

2. The Grantee shall obtain approval by the Grantor agency for the use of the real property in other projects when the Grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs or programs that have purposes consistent with those authorized for support by the Grantor.

3. When the real property is no longer needed as provided in 1 and 2 above, the Grantee shall request disposition instructions from the Grantor agency or its successor Federal agency. The Grantor agency shall observe the following rules in the disposition instructions:

(a) The Grantee may be permitted to retain title after it compensates the Federal Government in an amount computed by applying the Federal percentage of participation in the cost of the original project to the fair market value of the property.

(b) The Grantee may be directed to sell the property under guidelines provided by the Grantor agency. When the Grantee is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

[Revision 1, 04/17/1998]

(c) The Grantee may be directed to transfer title to the property to the Federal Government provided that in such cases the Grantee shall be entitled to compensation computed by applying the Grantee's percentage of participation in the cost of the program or project to the current fair market value of the property.

This Grant Agreement covers the following described real property (use continuation sheets as necessary).

NONE

L. Abide by the following conditions pertaining to equipment which is furnished by the Grantor or acquired wholly or in part with grant funds. Equipment means tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.
[Revision 1, 04/17/1998]

1. Use of equipment.

(a) The Grantee shall use the equipment in the project for which it was acquired as long as needed. When no longer needed for the original project, the Grantee shall use the equipment in connection with its other Federally sponsored activities, if any, in the following order of priority:

1) Activities sponsored by the Grantor.

(2) Activities sponsored by other Federal agencies.

(b) During the time that equipment is held for use on the property for which it was acquired, the Grantee shall make it available for use on other projects if such other use will not interfere with the work on the project for which the equipment was originally acquired. First preference for such other use shall be given to Grantor sponsored projects. Second preference will be given to other Federally sponsored projects.

2. Disposition of equipment. When the Grantee no longer needs the equipment as provided in paragraph (a) above, the equipment may be used for other activities in accordance with the following standards:

(a) Equipment with a current per unit fair market value of less than \$5,000. The Grantee may use the equipment for other activities without reimbursement to the Federal Government or sell the equipment and retain the proceeds.

(b) Equipment with a current per unit fair market value of \$5,000 or more. The Grantee may retain the equipment for other uses provided that compensation is made to the original Grantor agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value or proceeds from sale of the equipment. If the Grantee has no need for the equipment and the equipment has further use value, the Grantee shall request disposition instructions from the original Grantor agency.

The Grantor agency shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR), to the General Services Administration by the Grantor agency to determine whether a requirement for the equipment exists in other Federal agencies. The Grantor agency shall issue instructions to the Grantee no later than 120 days after the Grantee requests and the following procedures shall govern:

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the Grantee's request, the Grantee shall sell the equipment and reimburse the Grantor agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the Grantee shall be permitted to deduct and retain from the Federal share ten percent of the proceeds for Grantee's selling and handling expenses.

(2) If the Grantee is instructed to ship the equipment elsewhere the Grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the Grantee participation in the cost of the original grant project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the Grantee is instructed to otherwise dispose of the equipment, the Grantee shall be reimbursed by the Grantor agency for such costs incurred in its disposition.

3. The Grantee's property management standards for equipment shall also include:

(a) Records which accurately provide for: a description of the equipment; manufacturer's serial number or other identification number; acquisition date and cost; source of the equipment; percentage (at the end of budget year) of Federal participation in the cost of the project for which the equipment was acquired; location, use and condition of the equipment and the date the information was reported; and ultimate disposition data including sales price or the method used to determine current fair market value if the Grantee reimburses the Grantor for its share.

(b) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years to verify the existence, current utilization, and continued need for the equipment.

(c) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented.

(d) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(e) Proper sales procedures shall be established for unneeded equipment which would provide for competition to the extent practicable and result in the highest possible return.

This Grant Agreement covers the following described equipment(use continuation sheets as necessary).

NONE

M. Provide Financial Management Systems which will include:

1. Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.
2. Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.
3. Effective control over and accountability for all funds, property and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.
4. Accounting records supported by source documentation.

N. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm or photo copies or similar methods may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's government which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts and transcripts.

O. Provide information as requested by the Grantor to determine the need for and complete any necessary Environmental Impact Statements.

P. Provide an audit report prepared in accordance with Grantor regulations to allow the Grantor to determine that funds have been used in compliance with the proposal, any applicable laws and regulations and this Agreement.

Q. Agree to account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes when the Grantee is a unit of local government. States and agencies or instrumentality's of states shall not be held accountable for interest earned on grant funds pending their disbursement.

RUS Bulletin 1780-12
Page 6

R. Not encumber, transfer or dispose of the property or any part thereof, furnished by the Grantor or acquired wholly or in part with Grantor funds without the written consent of the Grantor except as provided in item K above.

S. To include in all contracts for construction or repair a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). The Grantee shall report all suspected or reported violations to the Grantor.

T. To include in all contracts in excess of \$100,000 a provision that the contractor agrees to comply with all the requirements of the Clean Air Act (42 U.S.C. §7414) and Section 308 of the Water Pollution Control Act (33 U.S.C. §1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 of the Clean Air Act and Section 308 of the Water Pollution Control Act and all regulations and guidelines issued thereunder after the award of the contract. In so doing the Contractor further agrees:

[Revision 1, 11/20/1997]

1. As a condition for the award of contract, to notify the Owner of the receipt of any communication from the Environmental Protection Agency (EPA) indicating that a facility to be utilized in the performance of the contract is under consideration to be listed on the EPA list of Violating Facilities. Prompt notification is required prior to contract award.

2. To certify that any facility to be utilized in the performance of any nonexempt contractor subcontract is not listed on the EPA list of Violating Facilities pursuant to 40 CFR Part 32 as of the date of contract award.

[Revision 1, 11/20/1997]

3. To include or cause to be included the above criteria and the requirements in every nonexempt subcontract and that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

As used in these paragraphs the term "facility" means any building, plan, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Grantee, cooperator, contractor, or subcontractor, to be utilized in the performance of a grant, agreement, contract, subgrant, or subcontract. Where a location or site of operation contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

Grantor Agrees That It:

A. Will make available to Grantee for the purpose of this Agreement not to exceed \$ 30,000.00 which it will advance to Grantee to meet not to exceed 75.00 percent of the project development costs of the project in accordance with the actual needs of Grantee as determined by Grantor.

B. Will assist Grantee, within available appropriations, with such technical assistance as Grantor deems appropriate in planning the project and coordinating the plan with local official comprehensive plans for sewer and water and with any State or area plans for the area in which the project is located.

C. At its sole discretion and at any time may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be (1) advisable to further the purpose of the grant or to protect Grantor's financial interest therein and (2) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Termination of This Agreement

This Agreement may be terminated for cause in the event of default on the part of the Grantee as provided in paragraph I above or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the project will not produce beneficial results commensurate with the further expenditure of funds.

In witness whereof Grantee on the date first above written has caused these presence to be executed by its duly authorized

Mayor

attested and its corporate seal affixed by its duly authorized

Clerk

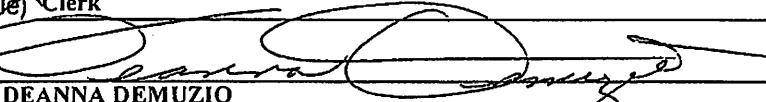
Attest:

By


CARLA BROCKMEIER

(Title) Clerk

By

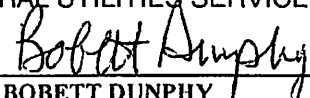

DEANNA DEMUZIO

(Title) Mayor

UNITED STATES OF AMERICA

RURAL UTILITIES SERVICE

By


BOBETT DUNPHY
Area Specialist


(Title)

12/28/2017

BY-LAWS
of
ILLINOIS ALLUVIAL REGIONAL WATER COMPANY

ARTICLE I

General Powers

The Corporation shall have and may exercise the powers set forth in its Articles of Incorporation together with any such other powers as are authorized by the statutes of the State of Illinois, including but not limited to the General Not for Profit Corporation Act of 1986, 805 ILCS 105/101.01 *et. seq.* as it now exists or may be hereafter amended.

ARTICLE II

Name and Location

Section 1. The name of the Corporation is:

ILLINOIS ALLUVIAL REGIONAL WATER COMPANY

Section 2. The principal office of this Corporation shall be:

1009 State Highway 16
Jerseyville, IL 62052

ARTICLE III

Seal

Section 1. The Corporation shall have a seal on which shall be inscribed thereon the name of the Corporation.

Section 2. The Secretary of the Corporation shall have custody of the seal.

ARTICLE IV

Fiscal Year

The fiscal year of the Corporation shall begin the first day of October of each year.

12/28/2017

Purpose

The primary purpose of the Corporation is to provide potable water to its members on a co-operative basis.

ARTICLE V

Membership

Section 1. Subject to acceptance and approval of at least two-thirds (2/3rds) majority of the Board of Directors, and the execution of a Water Supply Agreement, membership in the Corporation may be available to any Not-For-Profit Water Company, Village, Town, City, Water District, or other Municipality that distributes potable water to its residents, members and/or customers in the area served by the Corporation. The primary area to be served by the Corporation includes, but is not limited to the Illinois Counties of: Jersey, Macoupin, Green and Madison.

The following rules apply to members of the Corporation. A member may produce water for its own usage and for distribution to its residents, members and/or customers, who are end users. A member may also resell water it purchases from the Corporation to another distributor with the approval of the Board of Directors of the Corporation. However, a member may not treat, produce and supply potable water to other distributors, without the approval of a least two-thirds (2/3rds) of the Board of Directors of the Corporation. Such consent is not necessary for those agreements or relationships which predated the operation of the Corporation's water treatment plant, or the first delivery of water to said member, whichever is later.

Section 2. In no event shall a For-Profit Water Company or Corporation become a member of the Corporation. However, the Corporation may elect to sell water to a For-Profit Corporation or Company, on a bulk basis, if excess capacity exists and the Board of Directors approves it. The bulk rate charged to such a For-Profit Customer may exceed the rate charged to members or to Not-For-Profit Customers, which are not members of the corporation. Said rate shall be determined by the Board of Directors on a case by case basis.

Section 3. A Member may resign its membership at any time by written notice to the Corporation; provided however, that no such resignation shall affect any accrued liabilities of the resigning member to the Corporation, nor shall it affect any continuing contractual obligations of each party to the other, except that the rate charged by the Corporation to the resigned member shall thereafter be the same rate which it charges to non-member customers.

Section 4. Each member may have only one (1) membership.

Section 5. Membership shall not be transferable, provided however that the Water Supply Agreement between a member and the Corporation may be assigned in accordance with the terms thereof.

12/28/2017

Section 6. Membership in the Corporation shall terminate by operation of law, without further notice or hearing, in the event the member ceases to exist, dissolves or merges with another entity which is not a member. Membership shall also terminate automatically, without further notice or hearing if a member files for bankruptcy, is placed in receivership, permanently ceases to be a distributor of potable water to retail customers, or resigns.

Membership may also be terminated for cause, with notice, in accordance with Section 9 of this Article.

Water Supply Agreements between the Corporation and its members are assignable, but membership is not. In the event a member dissolves, its assets are sold, it is taken over by, and/or merges with another entity which is not a member, said entity assumes the rights and duties of the Water Supply Agreement, but does not become a member of the Corporation and is not entitled to representation on the Board of Directors. Rather, the assignee or transferee of the Water Supply Agreement would be a non-member customer of the Corporation which may, but is not required to apply for membership in the Corporation. In order to be admitted as a member, the applicant must meet the qualifications and receive the approval of a majority of at least two thirds (2/3rds) of the Board of Directors in accordance with Section 1 of Article V.

Section 7. In the discretion of the Board of Directors, a person or entity need not be a member of the Corporation to become a customer of the Corporation's water system. However, such customers will not have the right to representation on the Board of Directors, will not be entitled to vote on any matter which comes before the Board and may be charged a water rate which exceeds the rate charged to members. Said rate shall be determined by the Board of Directors.

Section 8. Members shall have the right to participate in the affairs of the Corporation, as herein provided and a preferential right to the use and enjoyment of the water and the water system, upon payment of the charges, fees and assessments fixed and determined by the Board of Directors as necessary to the operation, care and maintenance of the water system.

Section 9. Membership may be terminated by majority vote of at least two-thirds (2/3rds) the Board of Directors for cause, including but not necessarily limited to: 1) The failure to promptly pay obligations to the Corporation; 2) The entry into a contract to purchase water from another supplier, other than an approved Emergency Interconnection Agreement or the continuation of a purchase agreement or arrangement that predated the entry into the initial Water Supply Agreement with the Corporation; or 3) For any other action deemed detrimental to the best interest of the Corporation; provided however, that a statement of the cause for termination shall be delivered by certified mail, return receipt requested, by hand or other forms of delivery, to the last recorded address of the member, at least 28 days before final action is taken. The statement shall be accompanied by a notice of the time and place of the meeting of the Board of Directors at which the termination of the member's membership shall be considered, and the member shall have the opportunity to appear, through its duly appointed representative, and to be heard on the matter, before final action is taken.

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No such termination shall affect any accrued liabilities of the terminated member to the Corporation, nor shall it affect any continuing contractual obligations of each party to each other, except that the rate charged by the Corporation to the terminated member shall thereafter be the same rate which it charges to non-member customers.

Section 10. Any claim or dispute arising from or related to these By-Laws shall be settled by mediation, in accordance with the Illinois Uniform Mediation Act, 710 ILCS 35/1 *et. seq.* or by legally binding arbitration in accordance with the rules of the American Arbitration Association. Judgment may be entered upon a mediation agreement or an arbitration decision by any court otherwise having jurisdiction over the parties. These methods shall be the sole and exclusive remedy for any controversy or claim arising out of these By-Laws. The parties hereby waive all rights to a jury trial or to institute litigation with a court of competent jurisdiction to resolve any disputes concerning membership, membership rights, the termination of membership or the construction of these By-Laws.

ARTICLE VI

Meeting of the Members

Section 1. The annual meeting of the members of this Corporation shall be held at ILLINOIS ALLUVIAL REGIONAL WATER COMPANY, 1009 State Highway 16, Jerseyville, Illinois, at 5:00 o'clock P.M., on the 30th day in November of each year, provided that if said day be a legal holiday, then on the next secular day. The place, day, and time of the annual meeting may be changed to any other convenient place, day, and time by the Board of Directors giving notice thereof to each member not less than ten (10) days in advance thereof.

Section 2. Special meetings of the members may be called at any time by the President or by the Board of Directors and such meetings must be called whenever a petition requesting such meeting is signed, by at least two (2) members, and presented to the Secretary or to the Board of Directors. The purpose of every special meeting shall be stated in the notice thereof, and no business shall be transacted thereat, except such as is specified in the notice.

Section 3. Notice of meetings of members of the Corporation shall be given not less than ten (10) nor more than forty (40) days prior to the meeting. Unless otherwise agreed, notice of a special meeting shall be mailed, postage prepaid, to each member of record at the address shown upon the books of the company and shall state the date, time, place, and purpose of the meeting. Alternatively, notice of a special meeting may be provided by E-Mail and or telephone to each member which consents in writing and provides the Secretary with an E-mail address and or phone number, at which such notice may be given.

Section 4 A majority of members present by their Authorized Representatives, shall constitute a quorum at any meeting, provided that failing a quorum the members present may adjourn the meeting to a time and place certain, without further notice of the meeting.

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Section 5. From the enactment of these By-Laws, each member present at an annual or special meeting shall have one (1) vote on all questions coming before the Membership. No election of Directors shall be required, as each member may adopt its own rules for appointing a Regular and or Alternate Representative to the Illinois Alluvial Regional Water Company Board of Directors. An Alternate Representative may only vote in the event the member's regular Representative is unable to attend.

Section 6. The order of business at the annual meeting of members and so far as possible, at all other meetings shall be:

1. Call to order and proof of quorum.
2. Proof of notice of meeting.
3. Reading and action on any unapproved minutes.
4. Members' Concerns.
5. Auditor's Report.
6. Old Business.
7. New Business.
8. Adjournment.

ARTICLE VII

Directors and Officers

Section 1. It is the intent of the Corporation that each member be represented on the Board of Directors, until such time as the number of members increases to the point that it is in the Board's opinion, impractical to continue to do so. Until such event, the meetings of the Board of Directors are in essence meetings of the members and thus, any business which requires membership approval may be conducted at a regular or special meeting of the Board of Directors.

Section 2. The Corporation shall be managed by a Board of Directors consisting of three (3) or more persons, including one (1) Director appointed by each member. Each Director shall serve a three (3) year term. The Directors' terms shall be staggered, with at least one (1) Directors' terms ending each year. Each member shall appoint a Director to be its Regular Representative on the Board of Directors, but may also appoint an Alternate Representative to serve on the Board of Directors in the Regular Representative's absence. Each Director and Alternate Representative shall at all times, be an officer, director, trustee, special appointee, or employee of a member, in order to be eligible to serve as a Director of the Corporation. A member may not appoint a representative to the Corporation's Board who is an employee of a water company that is not a member, which also

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produces water and or is in competition with the Corporation. There shall be no limit as to the number of times a person may serve as a Director or Alternate Representative. The Secretary of the Corporation shall keep a schedule of the Director's and Alternate Representative's identities, addresses and terms. Each member shall promptly provide the Secretary with a certified copy of the minutes of the meeting where official action was taken by the member to appoint its representative to the Corporation's Board.

Section 3. Upon the resignation, removal, retirement, death or disability of a Director, the member shall be entitled to select a Successor Director immediately to serve for the remainder of the unexpired term. The Successor Director shall be an officer, director, trustee, special appointee, or employee of the member. The Alternate Representative may serve on the Board of Directors until such time as a Successor Director is chosen. The Alternate Representative may be appointed as the Successor Director, in which event the member may appoint a successor, Alternate Representative.

ARTICLE VIII

Meetings of Directors

Section 1. The Board shall meet at least annually, at such times and places as may be determined by resolution of the Board, but if there is no resolution to the contrary, the annual meeting of the Board shall be at the Corporation's principal place of business, immediately following the annual meeting of the members. The Board will normally meet monthly on the last Wednesday of each month at the Corporation's principal place of business, unless the Secretary notifies the Directors otherwise; No notice of the regularly scheduled meeting is required to be given.

Section 2. At said annual meeting of its Board of Directors, it shall elect a President and Vice President from the Directors and also elect a Secretary and Treasurer who may or may not be a Director, each of whom shall hold office until the next annual meeting of Directors, at which time the election and qualifications of the officer's successor have been verified, unless sooner removed by death, resignation, or for cause. An Alternate Representative may not serve as President or Vice President of the Board, but may serve as Secretary or Treasurer and may be appointed to serve on Committees formed by the Board.

Section 3. A majority of the Board of Directors present by the member's Regular or Alternate Representatives shall constitute a quorum at any annual, regular or special meeting of the Board. The affirmation vote of a majority of the Directors, at any meeting at which a quorum is present, shall be the act of the Board. An Alternate Representative shall be considered a Director for purposes of the By-laws, at all meetings where the Alternate Representative is counted towards the quorum and is entitled to vote. An Alternate Representative may not be counted towards a quorum or entitled to vote, if the Regular representative of that particular member is also present at a meeting.

Section 4. Compensation of officers may be fixed at any regular or special meeting of the Board. Directors shall receive no compensation for their services as such, but may receive a fixed sum for attending meetings and may be reimbursed for expenses.

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Section 5. The Board may establish such Committees as it deems necessary or expedient, provided however that no committee shall have more than two individuals who are representatives of the same member. An Alternate Representative may serve on a committee if the Board specifically authorizes same.

Section 6. Special meetings of the Directors may be called at any time by the President, or by the Board of Directors and such meetings must be called whenever a petition requesting such meeting is signed by at least two (2) Directors and presented to the Secretary or to the President of the Board of Directors. The purpose of every special meeting shall be stated in the notice thereof, and no business shall be transacted thereat, except such as is specified in the notice.

Section 7. No notice of regular meetings of Directors of the Corporation shall be given unless, the meeting is held at a time other than the regularly scheduled time, in which event notice shall be given, not less than seven (7) days prior to the meeting. Notice of special meetings of Directors of the Corporation shall be given not less than forty-eight (48) hours prior to the meeting. Notice of a special meeting, or rescheduled regular meeting may be mailed, postage prepaid, to each Director of record at the address shown upon the books of the company and shall state the date, time, place, and purpose of the meeting. In lieu of the foregoing, notice of a special meeting may be provide by E-Mail, and or by telephone to each director who consents in writing and provides the Secretary with an E-mail address and or phone number at which such notice may be given. Notice may, but need not be given to any Alternate Representative.

Section 8. Failing a quorum, the Directors present may adjourn the meeting to a time and place certain, without further formal notice of the meeting.

Section 9. Each Director present at an annual, regular or special meeting shall have one (1) vote on all questions coming before the Board of Directors. An Alternate Representative is welcome to attend all meetings, but is only entitled to vote in the event the member's Regular Representative is unable to attend.

Section 10. The order of business at the regular meetings of Directors shall generally be as follows:

1. Call to order and proof of quorum.
2. Proof of notice of meeting.
3. Reading and action on any unapproved minutes.
4. Action on bills and payrolls.
5. Reports of officers and committees.
6. Reports of Engineers, Attorneys, Auditors or Professionals.

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7. Old business.
8. New business.
9. Adjournment.

ARTICLE IX

Duties of Directors

Section 1. The Board of Directors, subject to restrictions of law, the Articles of Incorporation, and these By-Laws, shall exercise all of the powers of the Corporation, and, without prejudice to, or limitation upon their general powers, have full power and authority in respect to the matters hereinafter set forth, to be exercised by resolution or motion duly adopted by the Board:

- A.
 1. To enter into such contracts as are reasonably necessary or convenient to obtain raw water for treatment and distribution;
 2. To enter into contracts with its members or other parties, to supply potable water on such terms as the Board deems reasonable and appropriate;
 3. To construct, maintain and operate such facilities and systems as are necessary to supply potable water to its members or customers at a delivery point specified in the water supply contract; and
 4. To enter into any contracts which are authorized by law and reasonably related to the Corporation's purpose.
- B. To approve membership applications and cause to be issued appropriate certificates of membership. The Board may make binding commitments to issue membership certificates and to permit connection to the system in the future, in cases involving proposed construction, or may issue such certificates prior to the commencement of the proposed construction.
- C. To select and appoint all officers, agents or employees of the Corporation, remove such agents or employees of the Corporation, fix their compensation, pay for such services and prescribe such duties and designate such powers as may not be inconsistent with these By-Laws.
- D. To borrow from any source, money, goods or services; to make and issue notes and other negotiable or non-negotiable instruments evidencing indebtedness of the Corporation; to make and issue mortgages, deeds of trust, pledges of revenue, trust agreements, security agreements and financing statements, and other instruments,

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evidencing a security interest in the assets of the Corporation and to do every act and thing necessary to effectuate the same.

- E. To prescribe, adopt, and amend, from time to time such equitable uniform rules and regulations as, in its discretion, may be deemed essential or convenient for the conduct of the business and affairs of the Corporation and the guidelines and control of its officers, employees and agents, and to prescribe adequate penalties for the breach thereof.
- F. To order, at least once each fiscal year, an audit of the books and accounts of the Corporation by a certified public accountant. The audit report shall be submitted to the members of the Corporation at their annual meeting. A proposed annual budget shall be submitted to the Board of Directors at the first regular meeting, immediately preceding the end of the Corporation's fiscal year.
- G. To fix and alter the charges to be paid for water, including connection fees and the method of billing, time of payment, manner of connection, and penalties for late or nonpayment. The Board may establish one or more classes of users, including but not limited to "Members", "Not-For-Profit Customers" and "For-Profit Customers". All charges shall be uniform and nondiscriminatory in amount, within each of the first two classes of users. However, rates may be different between those two classes and need not be the same for all "For-Profit Customers".

 "Members" may be charged a different water rate than either "Not-For-Profit Customers" or "For-Profit Customers". "Not-For-Profit Customers", such as Not-For-Profit Corporations, Municipal Corporations and Water Districts, may be charged a different rate than "For-Profit Customers". The rates charged to "For-Profit Customers", need not be uniform, but shall be determined by the Board of Directors, on a case by case basis.
- H. To require all officers, agents and employees charged with responsibility for the custody of the funds of the Corporation to give bonds in the amount determined by the Board of Directors, the cost thereof to be paid by the Corporation.
- I. To select one or more banks to act as the depository of the funds of the Corporation and to determine the manner of receiving, depositing, and disbursing the funds of the Corporation and the form of checks and the person or persons by whom the same shall be signed, with the power to change such banks and the person or persons signing such checks and the form thereof at will.
- J. To levy assessments against the members of the Corporation in such manner and upon such proportionate basis as the Directors deem equitable, and to enforce collection of such assessments by the suspension of water service or other legal methods. The Board of Directors shall have the option to suspend service to any member who has not paid such assessment within thirty (30) days from the date the

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assessment was due, provided the Corporation must give the member at least fifteen (15) days written notice, at the address of the member on the books of the Corporation, of its intention to suspend such service if the assessment is not paid. Upon payment of such assessment and penalties applicable thereto and a re-connection charge, if one is in effect, service will be promptly restored to such member.

- K. To delegate, by resolution or motion, to its various Officers or Committees, such duties and authority as the Board may deem necessary or appropriate. Any action taken by an Officer or a Committee within the authority delegated by the Board shall be the lawful action of the Corporation.

ARTICLE X

Duties of Officers

Section 1. **Duties of President:** The President shall preside over all meetings of the Corporation and the Board of Directors, call special meetings of the Board of Directors, perform all acts and duties usually performed by an executive and presiding officer, and sign all membership certificates and such other papers of the Corporation, as the President may be authorized or directed to sign by the Board of Directors, provided the Board of Directors may authorize any person to sign any or all checks, contracts and other instruments in writing on behalf of the Corporation. The President shall perform such other duties as may be prescribed by the Board of Directors.

Section 2. **Duties of Vice-President:** In the temporary absence or disability of the President, the Vice President shall perform the duties of the President, provided, however, that in the case of death, resignation or disability of the President, the Board of Directors may declare the office vacant and elect a successor.

Section 3. **Duties of the Secretary:** The Secretary shall keep a complete record of all meetings of the Corporation and of the Board of Directors and shall have general charge and supervision of the books and records of the Corporation. The Secretary shall attest the President's signature on all membership certificates and other papers pertaining to the Corporation unless otherwise directed by the Board of Directors. The Secretary shall serve, mail, or deliver all notices required by law and by these By-Laws and shall make a full report of all matters and business pertaining to the office, to the members at the annual meeting or at such other time or times as the Board of Directors may require. The Secretary shall keep the corporate seal and membership certificate records of the Corporation, complete and attest all certificates issued and affix said corporate seal to all papers requiring seal. The Secretary shall keep a proper membership certificate record, showing the name of each member of the Corporation and date of issuance, surrender, transfer, termination, cancellation or forfeiture. The Secretary shall keep a record of the identity and terms of each Director and alternate representative. The Secretary shall make all reports required by law and shall perform such other duties as may be required by the Board of Directors. Upon election of a successor, the Secretary shall turn over to the successor all books and other property belonging to the Corporation.

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Section 4. **Duties of the Treasurer:** The Treasurer shall perform such duties with respect to the finances of the Corporation as may be prescribed by the Board of Directors and shall present the auditor's report to the members at the annual meeting of members and shall present the proposed budget to the Board of Directors at the first regular meeting immediately preceding the end of the fiscal year.

ARTICLE XI

Benefits and Duties of Members

Section 1. The Corporation, if sufficient members and adequate financing can be secured, will construct, operate and maintain, a raw water Source with the exact location to be determined, a Raw Water Main, from the source of the water supply to the Treatment Plant located at a location to be determined, Illinois and a finished Water Distribution System, from the Treatment Plant, to certain designated points of delivery to its members. The Corporation also may purchase and install a cutoff valve in the line serving each member. Said cutoff valve shall be owned and maintained by the Corporation and shall be installed on some portion of the water line owned by the Corporation. The Corporation shall have the sole and exclusive right to the use of such cutoff valve. However, the provisions of this section shall not be construed to require the acquisition or installation of meters or cutoff valves where the Directors determine that the use of either or both of such devices is impractical or unnecessary to protect the system or the rights of the members and/or that it is not economically feasible.

Section 2. Each member or customer shall enter into a water supply contract which shall embody the principles set forth in the provisions of these By-Laws and which agreements shall be satisfactory in form and content to any financier of the Corporation's system. Each member shall purchase from the Corporation, pursuant to such agreement, a substantial portion of the water needed by it, to supply potable water to its retail customers subject however, to the provisions of these By-Laws, to such rules and regulations as may be prescribed by the Board of Directors, and to the availability of water. The Board of Directors may consider the amount or percentage of a proposed member's usage in its decision as to whether to grant an application of membership. Water loss on the lines operated and maintained by the Corporation shall be born by the Corporation.

Section 3. In the event the total water supply shall be insufficient to meet all of the needs of the members or in the event there is a shortage of water, the Corporation shall pro-rate the water available among the various users on such basis as is deemed equitable by the Board of Directors.

Section 4. The Board of Directors may, and shall if required as a part of the system financing obligation, prior to the beginning of each fiscal year, determine a minimum rate to be charged each member during the following fiscal year for a specified quantity of water. The failure to pay water charges duly imposed shall result in the imposition of such penalties as the Board may determine by resolution.

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ARTICLE XII

Distribution of Surplus Funds

It is not anticipated that there will be any surplus funds or net income to the Corporation at the end of the fiscal year after provisions are made for the payment of the expenses of operation and maintenance and the funding of the various reserves for depreciations, debt retirement, and other purposes, including but not limited to, those required by the terms of any borrowing transaction. In the event that there should exist such surplus funds or net income, they may be placed in an existing or new reserve account to be used for the early retirement of any outstanding indebtedness or to be used for the improvement and/or extension of the corporate facilities as the Board of Directors may determine to be in the best interest of the Corporation and to the extent not otherwise provided for by any contractual arrangement. The occurrence in subsequent fiscal years of surplus funds or net income above the requirements of the Corporation as above mentioned, including, if any, a reserve for improvements and extension of the facilities shall be taken into consideration by the Board of Directors in determining the water rates to be charged the members.

ARTICLE XIII

Contractual Obligations

Notwithstanding anything herein to the contrary, the membership status of any entity shall not affect the validity or enforceability of any contract entered into between the Corporation and its member or former member, except that the water rate charged to a non-member, after resignation or termination may exceed the rate charged to a member.

ARTICLE XIV

Interconnections

The Corporation recognizes the mutual benefits of emergency interconnections between and amongst potable water systems and encourages its members to do so, provided it would not have a potentially serious, adverse impact on the Corporation's system or its ability to serve its members. As such, members may enter into interconnection agreements with each other without the approval of the Corporation's Board of Directors. The Board of Directors is aware of and hereby approves all interconnection agreements which any of its members currently has with other members and entities. However, henceforth the Corporation's Board of Directors must approve any or all interconnection agreements which a member proposes to enter into with an entity which is not a member of the Corporation. Likewise, the Corporation's Board of Directors must also approve any and all proposed interconnections of the Corporation's system, with an entity which is not a member of the Corporation.

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ARTICLE XVAmendments

These By-Laws may be repealed or amended by a vote of a majority of the Directors present at any regular meeting of the Board of Directors of the Corporation, or at any special meeting of the Board of Directors called for that purpose, except that no such amendment or repeal shall contravene any rule or regulation of any relevant regulatory agency or any financier of the Corporation, including but not limited to the United States Department of Agriculture Rural Development Agency, nor affect the rights of any bondholder, nor shall any such amendment or repeal affect the Federal tax status of any evidence of debt issued by the Corporation.

These By-Laws adopted at a Regular meeting of the members held Nov. 30, 2017 at Jerseyville, Illinois.

Sue Campbell
Sue Campbell, Secretary

FORM **NFP 102.10****ARTICLES OF INCORPORATION**

General Not For Profit Corporation Act

File # **71591573**

Filing Fee: \$50

Approved By: MAJ**FILED****DEC 05 2017**

Jesse White

Secretary of State

Article 1.Corporate Name: ILLINOIS ALLUVIAL REGIONAL WATER COMPANY, INC.**Article 2.**Registered Agent: SUE CAMPBELLRegistered Office: 1009 STATE HIGHWAY 16JERSEYVILLEIL 62052-2839JERSEY COUNTY**Article 3.**The first Board of Directors shall be 3 in number, their Names and Addresses being as followsC. ALLEN DAVENPORT 27897 STATE HWY 3, GODFREY, IL 62035CINDY CAMPBELL 323 COLLEGE AVE., CARLINVILLE, IL 62626SUE CAMPBELL 402 E. GARRISON ST., DORCHESTER, IL 62033**Article 4.** Purpose(s) for which the Corporation is organized:

Ownership and operation of water supply facilities for drinking and general domestic use on a mutual or cooperative basis.

Is this Corporation a Condominium Association as established under the Condominium Property Act? ☐ Yes ☒ NoIs this a Cooperative Housing Corporation as defined in Section 216 of the Internal Revenue Code of 1954? ☐ Yes ☒ NoIs this Corporation a Homeowner's Association, which administers a common-interest community as defined in subsection (c) of Section 9-102 of the code of Civil Procedure? ☐ Yes ☒ No**Article 5. Name & Address of Incorporator**

The undersigned incorporator hereby declares, under penalties of perjury, that the statements made in the foregoing Articles of Incorporation are true.

C. ALLEN DAVENPORT

Name

27897 STATE HWY 3

Street

Dated DECEMBER 05, 2017

Month & Day

GODFREY, IL 62035

City, State, ZIP

Exhibit D

Article 4.(continued)

Is this Corporation a Condominium Association as established under the Condominium Property Act? (check one)

☐ Yes ☐ No

Is this Corporation a Cooperative Housing Corporation as defined in Section 216 of the Internal Revenue Code of 1954? (check one)

☐ Yes ☐ No

Is this Corporation a Homeowner's Association, which administers a common-interest community as defined in subsection (c) of Section 9-102 of the code of Civil Procedure? (check one)

☐ Yes ☐ No

Article 5.

Other provisions (For more space, attach additional sheets of this size.):

Article 6.**Names & Addresses of Incorporators**

The undersigned incorporator(s) hereby declare(s), under penalties of perjury, that the statements made in the foregoing Articles of Incorporation are true.

Dated _____, _____, _____
Month Day Year

Signatures and Names

1. C Allen Davenport
Signature
C ALLEN DAUENPORT
Name (print)

2. Cindy Campbell
Signature
Cindy Campbell
Name (print)

3. Sue Campbell
Signature
Sue Campbell
Name (print)

Post Office Address

1. 27897 STATE HWY 3
Street
GODFREY IL 62035
City, State, ZIP

2. 323 College Ave
Street
Carlinville IL 62626
City, State, ZIP

3. 402 E. Garrison St.
Street
Dorchester IL 62033
City, State, ZIP

Signatures must be in BLACK INK on the original document.

Carbon copies, photocopies or rubber stamped signatures may only be used on the duplicate copy.

- If a corporation acts as incorporator, the name of the corporation and the state of incorporation shall be shown and the execution shall be by a duly authorized corporate officer. Please print name and title beneath the officer's signature.
- The registered agent cannot be the corporation itself.
- The registered agent may be an individual, resident in Illinois, or a domestic or foreign corporation, authorized to act as a registered agent.
- The registered office may be, but need not be, the same as its principal office.
- A corporation that is to function as a club, as defined in Section 1-3.24 of the "Liquor Control Act" of 1934, must insert in its purpose clause a statement that it **will comply with the State and local laws and ordinances relating to alcoholic liquors.**

Return to:

Firm Name

Mailing address

Attention

City, State, ZIP

STATE OF ILLINOIS

MACOUPIN COUNTY

October 2, 2017

CITY COUNCIL MEETING

PRESENT: Alderman Bilbruck, Alderman Brockmeier, Alderman Campbell, Alderman Direso, Alderman Downey, Alderman Oswald, Alderman Toon, Mayor Deanna Demuzio, City Attorney Rick Bertinetti, City Clerk Carla Brockmeier, Treasurer Jody Reichmann, Police Chief Haley, Zoning Administrator Steve Parr, PWD Tim Hasara Absent: Alderman Heigert

Approval of Previous Minutes - Motion was made by Alderman Downey to approve minutes, seconded by Direso, motion passed unanimously.

Approval of Bills/Approval of Lake Bills/Lake Adhoc Bills/Lake Watershed - Motion made to approve all listed by Alderman Direso, seconded by Campbell, motion passed unanimously.

Correspondence

SS Mary and Joseph Church - Approval for a fireworks demonstration on October 7, 2017 at the SS Mary and Joseph Church Fall Festival was given after a motion was made by Alderman Toon, seconded by Direso, motion passed unanimously.

M & M Shrine

Deanne Berrey

Ameren Illinois

Macoupin Co. CEO Class

Motion to approve all of the above listed correspondence and place on file was made by Alderman Direso, seconded by Downey, motion passed unanimously.

Public Comment

Mayor asked public to be cautious during burn day the first 7 days of the month due to drought conditions.

Matt Turley addressed the council making counter points to water entity and Alderman Campbell's comments regarding the Regional Water Concept.

Exhibit E

Page 2

Old Business

Ordinance Granting Variance 502 West First South - Motion was made by Alderman Downey, seconded by Toon to suspend the rules and pass the ordinance, motion passed unanimously.

Motion was made by Alderman Downey, seconded by Toon to pass Ordinance Granting Variance at 502 West First South, motion passed unanimously.

New Business

Enterprise Property Addition - Mary Beth Bellm representing the Macoupin County Enterprise Zone addressed the council regarding an ordinance amending the Macoupin County Enterprise Zone and the Intergovernmental Agreement by cities of Gillespie, Carlinville and Macoupin County for the address of 18804 Route 4, Carlinville, IL. Motion was made to suspend the rules by Alderman Bilbruck, seconded by Downey, motion passed unanimously. Motion was made to approve the addition pending purchase of 2.48 acres and adding to the enterprise zone by Alderman Downey, seconded by Direso, motion passed unanimously.

Water Entity Update - Alderman Campbell gave an update on the August and September meetings of the IL Alluvial Regional Water Company. Discussion took place with questions answered. Campbell also explained her position and support of the regional water concept.

Clarification of Water Representative Powers to Act and Responsibilities - Continuing the discussion above Alderman Campbell wanted to explain her reasoning for abstaining from voting at the last regional water meeting and wanted clarification of her duties as the representative, and a motion to clarify those duties. Alderman Toon made a motion to give Campbell the authority to vote, but not to spend any funds without council approval. Alderman Toon then later rescinded the motion, with Alderman Oswald then making a motion that Alderman Campbell have the power to act and appropriate funds as representative of Carlinville to the IL Alluvial Regional Water Company, seconded by Direso, motion carried with Brockmeier, Direso, Downey, Oswald, Mayor voting aye, Toon, Bilbruck, voting nay, Campbell abstaining.

Unsafe Property - 224 W. 1st South / Chief Haley has inspected property at 224 W. 1st South and deemed unsafe, he asked council to deem an unsafe property, so proceedings could begin to have the property secured. Motion was made by Alderman Direso, seconded by Downey to deem unsafe, motion passed unanimously.

Resolution Carlinville (CRV) PIDS Agreement - motion was made to approve resolution between IDOT, Amtrak and the City of Carlinville for the PIDS System at the train station by Alderman Downey, seconded by Direso, motion passed unanimously.

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Bank Loan Bids - Treasurer Reichmann contacted the four local banks regarding financing for a new backhoe. Financing from Cat was not available due to an insurance conflict. UCB had the best rate at 2.45% for 4 yrs., Bank and Trust 2.61% 4 yrs., and CNB at 3.48% for 5 yrs. Motion was made to approve UCB at 2.45% by Alderman Downey, seconded by Direso, motion passed unanimously.

Motion to adjourn was made by Alderman Downey at 8:25 p.m., seconded by Direso, motion passed unanimously.

Deanna Demuzio, Mayor

Attest: Carla Brockmeier, City Clerk

Foreman & Kessler, Ltd.
Attorneys at Law

Main Office
 204 E. Main
 Salem, IL 62881
 Tel: 618-548-8900
 Fax: 618-548-9844

Conference Room
 221 E. Broadway, Ste 106
 Centralia, IL 62801
 (By Appointment Only)

December 14, 2017

Mr. Daniel O'Brien
 Attorney, City of Carlinville
 331 E. 1st St. South
 Carlinville, IL 62626
via e-mail only
 dan_obrien@mac.com

RE: Notice of Criminal Trespass
Illinois Alluvial Regional Water Company, Inc.

Dear Dan,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

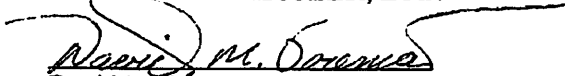
Having appointed a representative to Illinois Alluvial Regional Water Company, Inc., that decision appears to have already been made. The motive of those second guessing of that decision escapes me. Nevertheless, the point remains that our meetings are not the appropriate forum for these people to discuss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

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

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

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

Sincerely yours,
FOREMAN & KESSLER, LTD.


David M. Foreman

DMF/mi