

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT

MACOUPIN COUNTY, ILLINOIS

**FILED**

APR 16 2015

*W. S. Hebron*  
Clerk of the Circuit Court  
Macoupin County, Illinois

ROBERT BOB SANDERS )  
WASTE SANITATION, INC., )

Plaintiff, )

vs. )

No. 2015-MR-31

CITY OF BENLD, an Illinois Municipal )  
Corporation, GLORIA SIDAR, BRIAN )  
FRENSKO, TERESA TUCKER, )  
JAMES TILASHALSKI, MICHAEL )  
ROBINSON, PEYTON BERNOT and )  
JAMES KELLY, Individually, )

Defendants. )

**COMPLAINT**

NOW COMES the Plaintiff, ROBERT BOB SANDERS WASTE SANITATION, INC., by and through their attorney, WILLIAM S. HEBRON, of Hebron & Hebron, and in support of their Complaint, states as follows:

**COUNT I**

1. The Defendant, the City of Benld, is an Illinois municipal corporation located in Macoupin County, Illinois, which is not a home rule municipality.
2. That at all times referenced herein, the Defendants, James Tilashalski, Michael Robinson, Teresa Tucker, James Kelly, Brian Frensko and Peyton Bernot served as Alderpersons for the Defendant, the City of Benld.
3. That at all times referenced herein, the Defendant, Gloria Sidar, served as the Mayor of the Defendant, the City of Benld.

4. That the Plaintiff has served as a private trash hauler for many residents of the City of Benld during the past several years.
5. That at a Benld City Council meeting on May 19, 2014, the Benld City Council, hereinafter referred to as City Council, passed a motion to issue requests for proposals regarding a franchise agreement with one waste hauler pickup throughout the City of Benld, and thereafter, the City of Benld sent out requests for proposals for this.
6. That at a Special City Council Meeting of the City of Benld on July 28, 2014, a motion was made to place the question of awarding a franchise agreement, with one waste hauler throughout the City, as an advisory referendum, on the ballot for the November, 2014 election.
7. That the Alderpersons vote on the matter referred to in paragraph 6 above resulted in a 3 to 3 tie by the Alderpersons, and the Mayor, Gloria Sidar, broke the tie and voted against the motion, thereby defeating it.
8. That the matter concerning the advisory request was not on the Agenda for said meeting and was voted on in violation of the Open Meetings Act, 5 ILCS 120/2.02
9. Thereafter, residents of the City of Benld circulated and submitted a petition to have the following public question submitted to the voters as an advisory referendum to the voters for the November, 2014 election.

"SHALL THE CITY OF BENLD PASS AN EXCLUSIVE  
RESIDENTIAL TRASH FRANCHISE ORDINANCE THAT WOULD  
MANDATE CITIZENS TO ONE TRASH COMPANY?"

10. At the Benld City Council meeting on September 15, 2014, the Defendant, Gloria Sidar, added Nicole Brawley as a special guest who was permitted to address the Benld City Council at said meeting.
11. That at a Special Meeting of the Benld City Council on September 28, 2014, the City scheduled public meetings concerning the aforesaid proposed trash franchise ordinance for October 22, 2014 at 7:00 p.m., October 25, 2014 at 10:00 a.m., October 27, 2014 at 10:00 a.m. and October 27, 2014 at 1:30 p.m.
12. That there was public attendance at each of these meetings.
13. That at the November 4, 2014 election there were 282 NO votes on the public question on the aforesaid advisory referendum, and 209 YES votes.
14. That at the Benld City Council meeting on November 17, 2014, the aforesaid franchise agreement was discussed by the City Council.
15. That at said meeting on November 17, 2014, the Defendant, Gloria Sidar, added two things to the Agenda, the first being that Gina Mendenhall would like to be recognized as a guest to speak to the City Council, and the second being that Tom Hubert would like to be recognized as guest to speak to the City Council.
16. That at said meeting on November 17, 2014, Gina Mendenhall addressed the Council, indicating to the Council that people who voted on the aforesaid public question didn't understand it.
17. That at said meeting on November 17, 2014, Tom Hubert addressed the Council and spoke favorably about the adoption of the aforesaid franchise ordinance.

18. That after Gina Mendenhall and Tom Hubert addressed the Council, the City Council passed a Trash Franchise Ordinance, allowing a single hauler to contract the trash pickup for all residents, and to bill the residents through the monthly water bill, which ordinance was not submitted in written form and which was not orally read at the said meeting.
19. The Trash Franchise Ordinance referred to above in paragraph 18 above, was later provided to the City Council in written form, entitled "An Ordinance Adopting City-Wide Residential Municipal Solid Waste and Recyclable Collection and Transportation", a copy of which is attached hereto as "Exhibit 1" and made a part hereof, but it was never voted upon or approved by the City Council.
20. On December 15, 2014, the City Council passed a Resolution 2014-15 accepting the response of Flowers Sanitation Services, Inc., hereinafter referred to as Flowers, to be the City-wide residential and municipal solid waste and recyclable collection and transportation company, under the terms and consideration set forth in the response filed by Flowers, and to work on an agreement concerning the same to go into effect as of the month of April of 2015.
21. The City Council normally has its regular meeting one time a month on the 3<sup>rd</sup> Monday of each month.
22. That at a regular City Council meeting on February 16, 2015, the Plaintiff, through one of its attorneys, James P. Schrempf, addressed the City Council and expressed concerns about the proposed waste contract with Flowers.

23. At said meeting on February 16, 2015, the City Attorney for the City of Benld indicated that the proposed agreement had been distributed to all City Council members for their review, and further stated it would be inappropriate to act upon it at said meeting because it had not been on the Agenda, but indicated that the City Council should be prepared to act upon it at their next regularly scheduled meeting.
24. That the next regularly scheduled meeting following the meeting of February 16, 2015 was scheduled for March 16, 2015.
25. That on Friday, February 20, 2015, the City of Benld posted the Notice of a Special City Council Meeting to be held Monday, February 23, 2015 at 6:30 p.m.
26. That no officials of the City of Benld attempted to in any manner communicate to the Plaintiff, or their attorney, that there was going to be a Special City Council Meeting to consider the aforesaid waste hauling contract.
27. On February 23, 2015, the Plaintiff first learned that there was going to be a Special City Council Meeting on February 23, 2015, to consider the aforesaid waste hauling contract.
28. Upon learning of said Special City Council Meeting, the Plaintiff, through its attorney, contacted the Benld City Clerk's office and requested an opportunity to speak at said Special City Council Meeting.

29. The Plaintiff's attorney was advised that he would not be allowed to speak at said Special City Council Meeting because he had not requested the right to speak at least 48 hours prior to the commencement of the meeting.
30. Plaintiff, through its attorney, attended said Special City Council Meeting and again requested to speak before the City Council, and the request was denied.
31. Several residents of the City of Benld, who were opposed to the aforesaid waste hauling contract, appeared at the said Special City Council Meeting, and attempted to speak to the City Council, but were not allowed to speak because they had not requested to speak before the City Council at least 48 hours prior to the meeting.
32. That the City of Benld has an ordinance concerning non-members of the City Council addressing the City Council, a copy of which is attached hereto as "Exhibit 2" and made a part hereof.
33. That the aforesaid ordinance does not cover persons wishing to speak at meetings after the third Monday of each month or at Special City Council Meetings.
34. That the Illinois Open Meetings Act, 5 ILCS 120/2.06(g) provides that any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body.
35. That the City of Benld had no rules concerning allowing persons addressing the City Council at the aforesaid Special City Council Meeting and the aforesaid 48 hour rule should not apply to said meeting.

36. Prior to February 23, 2015, the City of Benld had permitted persons who were not members of the City Council, who had failed to request to speak at least 48 hours before the meeting, to speak at a City Council meeting.
37. That all administrative offices of the City of Benld, including, but not limited to the office of the City Clerk, are closed to the public from 4:00 p.m. on Friday until 8:00 a.m. on Monday, including the weekend of February 20, 2015 until February 23, 2015.
38. The posting at 8:45 a.m. on Friday, February 20, 2015 of a Special City Council Meeting to be held on Monday, February 23, 2015, at 6:30 p.m., effectively denied the right of any member of the public to address the City Council at the Special City Council Meeting of February 23, 2015, because the City Council maintains that it has a rule or procedure prohibiting members of the public from making comments at the meeting, unless a request to speak is filed with the City Clerk at least 48 hours in advance of the meeting.
39. No member of the public can make such a request on Saturday or Sunday, thus, the Plaintiff, through its attorney, and members of the public were effectively prohibited from speaking at the Special City Council Meeting of February 23, 2015, in violation of Illinois State Statute 5 ILCS 120/2.06(g). See also Illinois Attorney General Binding Opinion 2014 PAC 03194.
40. That the Special City Council Meeting on February 28, 2015 was conducted in violation of the aforesaid statute.

41. At said Special City Council Meeting on February 23, 2015, the City of Benld passed a resolution authorizing the City to enter into an agreement with Flowers as the exclusive waste hauler for the City of Benld, and thereafter entered into an Agreement for City-Wide Residential Municipal Solid Waste and Recyclable Collection and Transportation with Flowers, a copy of which is attached hereto as "Exhibit 3".
42. That the Resolution and Agreement referred to in paragraph 41 should be nullified and voided because it was passed at a meeting conducted in violation of 5 ILCS 120/2.06(g) and Illinois Attorney General Binding Opinion 2014 PAC 03194.
43. That the Plaintiff has incurred, and will continue to incur, attorney's fees and costs concerning the aforesaid violation of the aforesaid statute.
44. That 5 ILCS 120/3 permits the Court to assess reasonable attorney's fees and other litigation costs incurred by any party who substantially prevails in any action brought pursuant to said 5 ILCS 120/3.

WHEREFORE, the Plaintiff prays for the following relief:

- A. That the Resolution and Agreement referred to in paragraph 41 be declared null and void and nullified;
- B. That the Ordinance referred to in paragraph 19 be declared null and void because it was never properly passed by the City of Benld;
- C. That the City of Benld be enjoined from taking any action on matters that were purportedly approved at the Special Meeting on February 23, 2015;



- D. That the City of Bend be prohibited from enforcing the aforesaid 48 hour rule concerning the public addressing the City Council;
- E. That the City of Bend be enjoined from unreasonably prohibiting the public from addressing the City Council;
- F. For such other relief as is just, equitable and proper.

## COUNT II

1-44. The Plaintiff realleges paragraphs 1 through 44 of Count I of the Complaint as paragraphs 1 through 44 of Count II of said Complaint.

- 45. That the Ordinance referred to in paragraph 19 above requires all single-family private residences within the City to participate and pay for the service covered thereby.
- 46. Numerous persons occupying numerous residences within the City of Bend have long standing contractual relationships with trash removal service companies other than Flowers.
- 47. Many of the residents with long standing contractual relationships with other trash collection companies desire to continue their contractual relationships with those companies and do not wish to use Flowers, and do not wish to be billed by the City of Bend for the trash disposal services of Flowers, which will not be used for those residences.
- 48. The City of Bend officials, including the Mayor and City Attorney, Rick Verticchio, have stated publicly and in duly called City Council Meetings of the City of Bend, including, but not limited to, the regular City Council Meeting of February 16, 2015, that residents of the City of Bend who elect to

retain their contractual relationship with other private trash collection companies may do so, but that those residents will still be billed by the City of Benld for the services of Flowers, even though those services will not be utilized.

49. City Attorney Rick Verticchio has written a letter dated February 10, 2015, a copy of which is attached hereto as "Exhibit 4" and made a part hereof, to Attorney Russell Meyer, who was then representing the Plaintiff, Robert Bob Sanders Waste Sanitation, Inc., hereinafter referred to as Sanders, confirming that Sanders "can continue to solicit trash hauling business within the City of Benld". Mr. Verticchio goes on to state that "if your client continues to have clients with single-family residences in the City of Benld, the effect will be that the clients will be billed the fee charged by the City under the ordinance allowing trash pickup through Flowers Sanitation Services and will also be required to pay your client on a private basis".
50. At the regular meeting of the City Council on February 16, 2015, the attorney for Sanders, James E. Schrempf, requested that the City Council consider allowing residents who do not receive the services of Flowers, and can prove that they have contractual relationships with qualified trash collection service companies for their collection of trash within the City of Benld, to produce proof of such private contractual relationships, and be exempt from the payment of the trash collection fee proposed by the City of Benld to be added to the water bills of those residents because they will, in fact, not be receiving trash collection services of Flowers.

51. The officials of the City of Benld continue to hold to the position that they are entitled to receive a trash collection fee from each resident of the City of Benld for the services of Flowers, while at the same time recognizing that those services will not be provided to the residences of the City of Benld who are served by other qualified trash collection companies, which constitutes a denial of equal protection and due process of law as provided by Amendment XIV of the U. S. Constitution and Article 1, Section 2 of the Illinois Constitution.
52. The only statutory authorization for a City to impose a fee for the collection of trash services upon residences in the City of Benld is 65 ILCS 5/11-19-1.
53. 65 ILCS 5/11-19-1 does not allow the City of Benld to bill residences for trash collection services that are not actually provided to those residences. (See 41 Ill. 2d 562; 244 N. E. 2d 193; 1969 Ill. LEXIS 414)

WHEREFORE, the Plaintiff prays for the following relief:

- A. That the Ordinance referred to in paragraph 19 be declared null and void and stricken;
- B. That the Resolution and Agreement referred to in paragraph 41 be declared null and void and stricken;
- C. That the Defendants be prohibited from taking any action in furtherance of the Ordinance, Resolution and Agreement referred to in paragraphs A and B above;
- D. That the Defendants be enjoined from billing any residence for trash collection services where the residents of that residence can produce proof of

a contractual relationship with a qualified trash collection service provider (other than Flowers) and for so long as the subject residences continue to maintain that contractual relationship and so long as the trash is properly collected and disposed of by the private trash collection company;

E. For such other relief as is just, equitable and proper.

ROBERT BOB SANDERS WASTE  
SANITATION, INC.,

BY:   
One of Its Attorneys

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