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DELIVERED BY MESSENGER

Mr. Paul E. Bargren
Milwaukee County Corporation Counsel
Milwaukee County Courthouse
901 North Ninth Street, Room 303
Milwaukee, Wisconsin 53233

Dear Mr. Bargren:

We represent Michael L. Sanfelippo and the various entities he owns ("Mr. Sanfelippo"), which collectively own 23 airport taxicab permits issued by Milwaukee County for operation at General Mitchell International Airport ("GMIA"). Mr. Sanfelippo obtained each of his permits by purchasing them from third-parties at substantial cost, some for upwards of \$100,000. We are writing to you in connection with the proposed amendment of the Milwaukee County Code of Ordinances (the "Milwaukee County Ordinances") relating to airport taxicab permits being contemplated by the Milwaukee County Board of Supervisors which, if enacted, would be an unconstitutional taking and a breach of contract, thereby creating significant civil liability for Milwaukee County.

Section 4.05.01 of the Milwaukee County Ordinances governs airport taxicab permits at GMIA. It provides that the number of airport taxicab permits shall be limited to 50, are transferrable, and are perpetual subject only to payment of an annual renewal fee. Revocation of a permit is only permitted, after a hearing, if it is determined that the owner failed to comply with Chapter 4 of the Milwaukee County Ordinances.

The fact that airport taxicab permits are perpetual and transferrable make them very valuable. As Terry Blue, Interim Director of GMIA, stated at a meeting on January 21, 2015 of the Milwaukee County Transportation, Public Works and Transit Committee:

Currently permits are transferrable and they are perpetual. . . . What essentially happened when the ordinance was originally crafted many years ago was that by making the permits perpetual and transferrable it essentially created a value to them and many of the permits were sold and were obtained by a couple of very large operations.

In his discussion, Mr. Blue mentioned American United Taxicab Company, which is owned by Mr. Sanfelippo, as one of those "very large operations."

On November 24, 2014 the Milwaukee County Board of Supervisors passed a resolution requesting that the Director of GMIA assess ground transportation issues at GMIA and provide a recommendation to the Transportation, Public Works and Transit Committee in connection with those issues. The Director did so and on November 7, 2014, recommended that section 4.05.01 of the Milwaukee County Ordinances be amended to do the following:



1. Raise the cap for the number of airport taxicab permits at GMIA from 50 to 60;
2. Replace the current permits with a new permitting process that uses a lottery to randomly select permit holders;
3. Change the duration of the permits from the current perpetual model to a two-year period;
4. Limit the number of permits held by any individual owner or operator to 10 permits;
5. Charge an application fee of \$50.00 to defray the cost of conducting the required lottery and administering the permitting process; and
6. Make the new permits non-transferrable except under very limited circumstances (replacement of a vehicle).

On January 21, 2015 the Transportation, Public Works and Transit Committee recommended the proposed amendments for adoption. This was the meeting at which Mr. Blue spoke. Interestingly, when asked if he supports the recommendations, he twice refused to answer the question, and only very reluctantly said that he does so after being pressed for an answer.

On February 5, 2015 the Board of Supervisors considered the matter and referred it back to the Transportation, Public Works and Transit Committee and to your Office for consideration of the legality of the proposed amendments.

Mr. Sanfelippo does not challenge that portion of the proposed amendments increasing the number of airport taxicab permits at GMIA from 50 to 60. It should be noted, however, that there appears to be no reasonable basis for doing so and, in fact, on January 21, 2015 Mr. Blue expressly told the Transportation, Public Works and Transit Committee that the current number of airport taxicab permits are sufficient to meet the airport's needs:

The airport, I believe, to date, rarely has times where we do not have cabs available and even rarer when we have a request where there is not another cab around to meet the demand.

As such, there appears to be no reasonable basis to increase the number of airport taxicab permits at GMIA but, as noted above, Mr. Sanfelippo does not challenge that aspect of the proposed amendments.

What Mr. Sanfelippo does challenge is the remaining aspects of the proposed amendments that seek to revoke the 23 perpetual and transferrable airport taxicab permits he currently owns, which are valued at substantially more than \$1 million. As you likely know, the City of Milwaukee made significant changes to its taxicab ordinances last year, rescinding the cap on the number of permits issued and making permits available to anyone who wants them, subject to meeting minimal requirements. The City, however, did not revoke the existing taxicab permits, intentionally so, as it fully recognized that doing so would violate constitutional property

rights of the taxicab permit holders. As City Attorney Grant F. Langley and Assistant City Attorney Adam B. Stephens stated in an Opinion Letter, dated June 17, 2013, to the Milwaukee County Common Council:

A taxicab license is a protectable property interest. *Flower Cab Company v. Petite*, 658 F. Supp. 1170, 1177-1179 (N.D. Ill. 1987). Under an ordinance providing that the taxicab license holder is an exclusive owner, that the holder may assign the license with few qualifications, that the holder is entitled to renewal of the license absent revocation or suspension, and that the owner may assign licenses for consideration to subsequent owners, the ordinance creates valuable property interests that may be protected by the Fourteenth Amendment to the United States Constitution.

...

Current taxicab permittees in the City have a property right in their license and as long as they obey the various state and municipal regulations, they are entitled to renewal of that license. . . .

...

It may be reasonably argued by permittees that they have a property right not only in their permit but also in a right to transfer or lease that permit. . . .

Based upon the discussions set forth above, any new legislation should protect the property interests of current permittees by allowing them to transfer their permits to other persons. . . .

Langley/Stephens Letter at 5, 6, 15.

For those reasons, the City of Milwaukee repeatedly argued in the courts that its amended ordinances are valid specifically because they do not revoke any of the existing taxicab permits:

- "Through the new ordinance, the City is not revoking or limiting the plaintiff's taxicab permits in any way." *City of Milwaukee's Brief in Support of its Motion to Dismiss* (Mar. 4, 2014) at 3 in *Badwan v. City of Milwaukee*, E.D. Wis. Case No. 14-CV-179 (emphasis in original).
- "[T]he City, in passing the ordinance, has not restricted, revoked or limited the plaintiffs' taxicab permits in any way." *City of Milwaukee's Brief in Opposition to Plaintiff's Motion for Preliminary Injunction* (Sept. 2, 2014) at 29 in *Joe Sanfelippo Cabs, Inc. v. City of Milwaukee*, E.D. Wis. Case No. 14-CV-1036.

In *Flower Cab Co. v. Petite*, 658 F. Supp. 1170 (N.D. Ill. 1987), the case cited by Messrs. Langley and Stephens, the City of Chicago enacted an ordinance in 1963 authorizing the transferability of taxicab permits. In 1982 the City amended its ordinances to rescind that authorization and expressly prohibit the sale, transfer and assignment of taxicab permits. The plaintiff, a taxicab company, sued the City contending that the amendment violated its property rights as protected by the Fourteenth Amendment. The federal court agreed, holding as follows:

[T]he court finds that plaintiffs clearly possess a protectable property interest in the taxicab licenses. The ordinance provides that the license holder is the exclusive owner of the license, that he may assign it with few qualifications, and that he is entitled to renewal of the license absent revocation or suspension. These characteristics demonstrate that the taxicab licenses were securely and durably the licensee's. Accordingly, the court rejects the City's argument that these licenses are not property protected by the Fourteen Amendment of the Constitution.

...

A taxicab license is clearly a valuable property right, and its assignability was an important aspect in the bundle of rights that comprises the property in question.

...

[P]laintiffs possess a property interest in these licenses and their transferability. . . .

Id. at 1175, 1176, 1179 (citation omitted) (emphasis added).

The case of *Boonstra v. City of Chicago*, 574 N.E.2d 689 (Ill. App. Ct. 1991) arose out of the same City of Chicago amended ordinance. In that case, the state court similarly held that the amended ordinance prohibiting the sale, transfer and assignment of taxicab permits was an unconstitutional deprivation of the plaintiff's property rights:

[T]he facts under which the taxicab license in the present case was issued and assigned support the conclusion that the taxicab license and its assignability is a constitutionally protected property interest. Here, the City of Chicago expressly limited the number of taxicab licenses to be issued and expressly provided that they were assignable. . . . In effect, the City of Chicago created for its citizens a public market place for the assignment of its taxicab licenses. Thus, the taxicab licenses in reality became more than just mere personal permits granted by a governmental body to a person to pursue some occupation or to carry on some business subject to regulation under the police power. In a functional sense, the taxicab licenses embraced the essence of property in that they were securely and durably owned and marketable.

Plainly, the characteristics which the City of Chicago, itself, gave to its taxicab licenses and their assignability are all consistent with an individual entitlement which cannot be removed except for cause or with just compensation. We therefore conclude that the taxicab license in the present case is constitutionally protected property and its assignability is an important aspect in the assemblage of rights that comprise that property interest. ***Thus, we hold that the taxicab license and its assignability is a constitutionally protected property interest pursuant to the Fourteenth Amendment.***

One constitutional limitation on the right of a legislative body to amend or repeal legislation is a prohibition against affecting vested property rights without due process and just compensation. Here, when the City of Chicago adopted the taxicab ordinance in 1963 and issued taxicab licenses which were assignable pursuant to the ordinance, it created and conferred property rights in the taxicab licenses which accrued to those persons who purchased the taxicab licenses as assignees and were approved by the City of Chicago. Thus, when the City of Chicago amended the taxicab ordinance in 1982 by summarily precluding those persons already having an assignable property interest in taxicab licenses from being able to assign their property interests, the City of Chicago's action constituted a taking of property without due process and without just compensation. . . .

Id. at 694-95 (citations omitted) (emphasis added).

In addition to violating constitutional property rights by amending ordinances to provide for revocation of existing taxicab permits and/or to prohibit transferability of those permits, doing so is a breach of contract. The Milwaukee County Ordinances currently provide that airport taxicab permits are perpetual and transferable. Such an ordinance creates a contract between Milwaukee County and the taxicab permit holders. As the court held in *Yellow Cab Co. v. City of Chicago*, 71 N.E.2d 652 (Ill. 1947):

The question to be determined in the case at bar is whether or not a licensing ordinance can constitute a contract between the city and the licensees. It is the opinion of this court that the licensing ordinances in the case at bar did create a contract between the city and the licensees. . . . It being the opinion of this court that the ordinances granting licenses to appellees and others operating taxicabs in the city of Chicago constitute a valid contract between appellees and the city of Chicago. . . .

Id. at 659. That ordinances can create binding contracts is a well-recognized legal proposition. See, e.g., *Sonoma Cnty. Ass'n of Retired Emps. v. Sonoma Cnty.*, 708 F.3d 1109, 1117 (9th Cir. 2013) ("[T]he County's resolutions and ordinances may create a contract if the text and the

circumstances of their passage clearly evince an intent to grant vested benefits. . . ."); *Studier v. Michigan Pub. Sch. Emps.' Retirement Bd.*, 679 N.W.2d 88, 98 (Mich. Ct. App. 2004) ("A statute can create a contract if the language and circumstances demonstrate a clear expression of legislative intent to create private rights of a contractual nature enforceable against the state."); *City of Houston v. Williams*, 353 S.W.3d 128, 136-37 (Tex. 2011) ("A municipality utilizes ordinances as a means to conduct its business. It is therefore unsurprising that this Court has implicitly recognized that municipalities sometimes contract with third parties by way of ordinance. When an ordinance evinces a contract, and is sought to be enforced as one, we have construed it as any other contract.").

The Milwaukee County Ordinances, as currently on the books, clearly provide that airport taxicab permits are perpetual, transferable, and revocable only after a hearing for violation of Chapter 4 of the Ordinances. The Ordinances grant current taxicab permit holders a constitutionally-protectable property right and constitute a contract between Milwaukee County and the taxicab permit holders. As the City of Milwaukee conceded, "[c]urrent taxicab permittees . . . have a property right in their license and as long as they obey the various state and municipal regulations, they are **entitled** to renewal of that license." See *Langley/Stephens Opinion Letter to City of Milwaukee Common Council* (June 17, 2013) at 5 (emphasis added).

In *Badwan v. City of Milwaukee*, E.D. Wis. Case No. 14-CV-179, Judge Charles N. Clevert held that taxicab permit holders in the City of Milwaukee have constitutionally-protected rights in their taxicab permits:

The court does hasten to add, so that it is reasonably clear, that its finding that the plaintiffs have a property interest in their taxi licenses is limited to concluding that the city's treatment of the permits and the permittee's expectations when acquiring and/or holding the taxi operating permits created an expectation that is protectable.

Hearing Trans. (Mar. 12, 2014) at 7-8.

What is particularly disturbing about the amended ordinances proposed by Milwaukee County is that they would appear to benefit no one -- including the County and taxicab passengers -- while expressly targeting a "couple of very large operations," using Mr. Blue's words, including Mr. Sanfelippo. It is no surprise, of course, that Mr. Sanfelippo's brother, Joseph Sanfelippo, was a former Milwaukee County Supervisor who, as a Representative in the Wisconsin State Legislature, has authored bills which have angered most, if not all, of the Milwaukee County Supervisors.¹ The proposed amended ordinances appear to be designed solely to indirectly retaliate against Joseph Sanfelippo. All one needs to do is ask himself or herself the following questions to arrive at that conclusion:

- If, as Mr. Blue states, taxicabs are almost always readily available at GMIA, why are more taxicabs being considered?

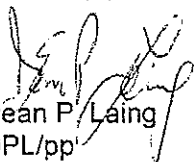
¹ For one, Joseph Sanfelippo was the main author of the state law passed in 2013 that ordered a referendum which was approved by the voters in 2014 that cut Milwaukee County Supervisor's pay in half, from \$50,149 to \$24,051, effectively forcing part-time status.

- What is the logic or potential benefit of revoking current airport taxicab permits from persons who paid millions of dollars to acquire them and reassigning them to others for virtually free?
- Why would GMIA want to train new taxicab operators every two years on airport procedures and then do it all over again two years later with new taxicab operators?
- What is the logic or potential benefit of limiting a person to 10 airport taxicab permits?
- Why can't airport taxicab permits be transferable even if limited to a two-year period? What is the logic or potential benefit in making them non-transferrable?
- Isn't the true purpose of the proposed amended ordinances to strip Mr. Sanfelippo of his airport taxicab permits for which he paid substantial sums of money to third-parties in reliance on the current ordinances in order to indirectly punish his brother for wholly unrelated conduct?

If Milwaukee County enacts the proposed ordinances, Mr. Sanfelippo and his entities owning airport taxicab permits (as well as likely others) will sue Milwaukee County, and Milwaukee County will lose. The law is clear that Milwaukee County may not do what the Transportation, Public Works and Transit Committee proposes. Additionally, there is no benefit to Milwaukee County in doing that. The only reason the Milwaukee County Supervisors would do that would be to indirectly retaliate against Joseph Sanfelippo by punishing his brother to the tune of over \$1 million. Of course, that is not a permissible reason to enact a clearly unconstitutional ordinance, or any ordinance, for that matter.

On behalf of Mr. Sanfelippo, we request that you advise the Board of Supervisors that the proposed amended ordinances are unconstitutional and cannot be legally defended, and that it should put its dislike for Joseph Sanfelippo aside and move on to more productive things. Should you want to discuss anything regarding this matter, feel free to contact me and I would be pleased to meet with you in person or speak with you over the telephone to answer any questions you have.

Very truly yours,



Dean P. Laing
DPL/pp

c: Timothy R. Karaskiewicz (by messenger)
Michael L. Sanfelippo