

**REQUEST FOR COUNCIL REVIEW
OF THE FINDINGS OF FACT AND ORDER
REGARDING ARROW AMBULANCE LLC
LICENSE APPLICATION**

By: Decatur Ambulance Service (“DAS”)
and
St. Mary’s Hospital, of the Hospital Sisters
Of the Third Order of St. Francis

CITY OF DECATUR, IL
FILED
SEP 05 2018
Ashley H. Bright
CITY CLERK

I. INTRODUCTION

Decatur Ambulance Service (“DAS”) has loyally served the EMS needs of the City of Decatur and surrounding area for nearly 60 years. In June of 2018, an affiliate of HSHS St. Mary’s Hospital (collectively, “HSHS”) acquired DAS because both organizations are committed to a highly-collaborative environment of service, and are eager to work with the City and County leaders to continuously meet and advance the needs of emergency medical services in the Decatur service area. DAS is committed to providing the same dedicated and loyal service as it was before the acquisition, but now has the financial resources, support, and leadership of a major mission-driven, faith-based, Catholic health system to assure that in these difficult economic times (due in part to declining State and insurance reimbursement), the EMS needs of Decatur and surrounding communities can continue to be met. DAS and HSHS submit this Request for Council Review so that the Council can conduct further investigation and make a fully-informed decision as to whether licensing a second ambulance service would positively impact the health, safety, and welfare of the citizens of Decatur. It is the contention of DAS and HSHS that further investigation will show that Arrow Ambulance Service, LLC (“Arrow”) has not met its burden of proof under the applicable ordinance, and thus, the Council should vote against the recommendation of the hearing officer and deny Arrow’s application for an ambulance license.

II. APPLICABLE ORDINANCES

Chapter 53 of the Decatur City Code (the “Ordinance”) outlines the rules and regulations for ambulance services operating under a City license, as well as the application process to obtain said license. Once an application for an original license is submitted, a public hearing shall be held by the City Manager, or his designee. (§6). During the public hearing, the hearing officer may consider exhibits offered by the applicant, the application itself, the experience and responsibility of the applicant, the effect the proposed service may have on the general health safety and welfare of the community, and anything else the officer considers to be relevant. (§7).

Following the hearing, the officer shall make a written report of findings and conclusions, specifically stating findings as to: a) whether or not the public is, at the time, reasonably adequately served; b) whether or not convenience and necessity require the proposed service; c) whether or not the proposed service location, personnel, equipment, vehicles and operation comply with the provisions of Chapter 53; and d) whether or not the license applied for should be granted. (§7).

The procedures for requesting a Council review of the hearing officer’s report are contained within Section 8 of the Ordinance. Further discussion concerning this Section is contained in Section IV below.

The Sections of the Ordinance referenced above are reproduced below:

6. NOTICE OF PUBLIC HEARING. Within a reasonable time after an application for original license is filed with the Finance Department, a public hearing shall be, and in the case of application for renewal of license a hearing may be, held by the City Manager,

or his designee, notice of the time and place whereof shall be published once in a newspaper of general circulation in the City not less than ten days prior to said hearing, and a copy of which said notice shall be served, either personally or by mail, upon the applicant and upon each ambulance service then currently licensed by the City.

(Amended, Ordinance No. 89-42, May 1, 1989)

7. CONDUCT OF PUBLIC HEARING. Such hearing officer may consider that which is submitted concerning any item contained within such application; the experience and responsibility of the applicant; the effect the proposed service may have on the general health, safety and welfare of the community; and such other matters as may to such officer appear to be germane, and such officer shall file with the Clerk a report in writing of findings and conclusions with regard thereto, which said report shall specifically, in addition to whatever else may be reported, state findings as to;

- (a) Whether or not the public is, at the time, reasonably adequately served.
- (b) Whether or not convenience and necessity require the proposed service.
- (c) Whether or not the proposed service location, personnel, equipment, vehicles and operation comply with the provisions of this Chapter.
- (d) Whether or not the license applied for should be granted.

8. COUNCIL REVIEW. Any party aggrieved by the conclusions of such hearing officer as to whether or not a license should be granted may, within ten days from the date such report is filed with the Clerk, file a request with the Clerk for Council review of said report, whereafter the Council shall consider the report and may make or cause to be made such additional investigation or inquiry as it deems advisable, whereafter the Council may make such determination in the matter as appears to it to be in the best interest of the general health, safety and welfare of the community. (Emphasis added.)

III. SUMMARY OF PUBLIC HEARING TRANSCRIPT

The public hearing on Arrow's application took place on August 16, 2018, before hearing officer, Steven Mahrt. Testimony on behalf of Arrow was offered by: 1) Larry Sapp, the Director of Arrow Ambulance; 2) Michael Smith, Arrow's EMS Medical Director; and 3) Lynne Barnes, the Chief Operating Officer of Carle Health System. Mr. Sapp testified to Arrow's background, service area, equipment, and personnel. Mr. Smith testified to the overall quality of Arrow as an organization. Ms. Barnes testified to Carle's commitment to expand Arrow service to Decatur.

Several representatives from Decatur Memorial Hospital ("DMH") also testified in support of the application. Ted Clark, Emergency Medicine Director in DMH's emergency department, testified that DMH has seen a 12% increase in ambulance transfers and transports, and he claimed that delays are occurring due to the availability of ambulance transport. Tara Peasley, who was employed by DMH as the Director of DMH's emergency room at the time of the hearing, but has since been promoted, testified that 62% of traumas transferred to a facility with a higher level of care were delayed due to the ambulances being spread too thin. Dr. Oliver Dold, a neurosurgeon who is also employed by DMH, testified that time is of the essence in

treating stroke victims, and that the sooner treatment is received, the better chance the patient has to recover.

Additional testimony in support of the application was offered by local business people, Gerry Demirjian and Laurie Brown. Each testified that there was a need for an additional ambulance service based on their observations from the business community.

Jerrime Hiser, the business agent for the Local Union No. 916 of Teamsters, expressed concern over the harm that the introduction of a new ambulance service would have on the current paramedics working in the Decatur community, including experienced DAS employees who have served the area with pride and distinction for many years. Specifically, he stated that bringing in an out-of-town non-union ambulance service would result in lower wages, fewer benefits, and a loss in jobs.

IV. STANDING TO SEEK COUNCIL REVIEW

Section 8 of the Ordinance states: “any party aggrieved by the conclusions of such hearing officer as to whether or not a license should be granted may, within ten days from the date such report is filed with the Clerk, file a request with the Clerk for Council review of said report.” (Emphasis added.) Party is defined in Black’s Law Dictionary as any person or entity who is directly interested in any affair, contract or conveyance. The term “aggrieved” is not defined in the Code, a common definition includes “troubled or disturbed.” Under the legal definition of “party” and the common definition of “aggrieved,” DAS is clearly a party aggrieved by the conclusions of the hearing officer.

DAS has certainly been aggrieved by the hearing officer’s conclusions regarding Arrow’s license application. First, the findings are based solely on Arrow’s application and the testimony offered in support, which alleged in large part that DAS is not reasonably and adequately serving the City of Decatur. DAS should have an opportunity to present evidence to show that the City is in fact reasonably and adequately served by DAS, and Section 8 of the Ordinance gives DAS that right because they are troubled and disturbed by the hearing officer’s conclusions.

Second, Section 8 does not require that a party attend the public hearing in order to request Council review. Rather, it merely requires that one be “aggrieved by the conclusions of [the] hearing officer”, which in this case, were not published until 11 days after the hearing. Even if DAS attended the hearing, they had no way of knowing what evidence would be offered in support of the application, and thus no opportunity to present a meaningful response. However, Section 8 affords DAS that opportunity by its unambiguous terms.

Third, DAS is categorically aggrieved by the licensing of a second ambulance service in the City of Decatur. At present, DAS is the sole ambulance service operating under a Decatur license, and adding a second service would negatively impact its business interest. In addition, adding a second service could negatively affect the ability of DAS to respond to calls quickly and efficiently, for reasons discussed in more detail below.

Therefore, HSHS submits this Request for Council Review so that it can offer evidence in opposition of Arrow's application and in support of the current high-quality services that DAS is providing to the City of Decatur, which will assist the Council in making a decision that is in the best interest of the general health, safety and welfare of the community.

V. WHY FURTHER INVESTIGATION IS WARRANTED

The testimony presented at the public hearing did not provide the full story of Decatur's EMS needs, nor did the testimony provided by DMH employees accurately represent the current state of ambulance services in the Decatur market. Thus, it is necessary to provide additional information about the operations of HSHS and DAS so that the Council can make a fully-informed decision.

HSHS St. Mary's is a not-for-profit organization which has served Decatur for almost 140 years. HSHS St. Mary's is also a mission-driven religious-based health system built on the foundation of service to the people in need. DAS was founded in Decatur in March of 1959, and was acquired by HSHS in June of 2018. DAS employs approximately 135 people and operates 6 ambulances around the clock out of 4 stations in Decatur, and 1 station in Forsyth.

From a quality of service perspective, DAS is unique in that each ambulance is predominantly manned and operated by two EMT-Ps (commonly known as "Paramedics") at all times. This is unlike most ambulance companies, as this procedure exceeds the national standard, which is to operate with a Paramedic and EMT-B (a "Basic"). Paramedics are trained to handle all levels of emergency calls, whereas a Basic may not be qualified to handle certain injuries or situations. Thus, if a Paramedic/Basic team is called to 10 emergencies during their shift where the Basic is not qualified, then the Paramedic will be responsible for the majority of the work on each of those calls. However, the DAS procedure allows Paramedics to alternate who takes the lead on each call, which reduces their work load, stress level, and burn out over time.

Although employees and representatives from DMH testified to an increase in their emergency transport and transfer calls, there was no evidence or testimony offered as to whether the City's overall call volume has increased. The population of Decatur and Macon County has steadily declined since 1990, and DAS simply has not experienced the increase in call volume alleged by DMH. (For reference, Decatur had a population of 84,000 in 1994, and DAS was operating sufficiently with only 4 ambulances. Today, the population is 72,000 and DAS is currently operating 6 ambulances on a 24/7 basis.) Adding additional ambulances to the community will not create increased call volume, but rather, will dilute the quality of services and service providers to an already shrinking market. Further investigation should be conducted to determine what effect an additional service could have on the quality of ambulance services and services providers, including the job market for paramedics and ambulance service employees.

Representatives from Arrow also testified that they would be willing to work with partner agencies to establish a two-ambulance system for efficiency and effectiveness. However, DAS has already started to integrate its software with the Central Illinois Regional Dispatch Center ("CIRDC") to ensure that DAS is ready to respond to dispatch calls. DAS has never missed a 9-

1-1 call using its current technology; with the installation of its updated software, DAS is ready, willing and able to serve the residents of Decatur and Macon County. Investigation should be conducted to determine if it would be more efficient to add additional ambulances to the DAS fleet rather than adding a new service from outside the community.

Arrow representatives also testified that they currently operate in communities with two ambulance services, but made no reference to the populations of those areas, the numbers of ambulances in service between the two companies, or the call volume of those communities. All of this comparable information would be relevant in determining whether a two-ambulance system would be appropriate for the City of Decatur at present, and the Council should investigate these questions.

Employees and representatives from DMH testified that there is sometimes a delay in transport and response times. However, these concerns have never been brought to the attention of DAS prior to the public hearing. DAS is willing to work with City and County leaders to resolve any issues as they arise. In fact, DAS has already purchased "geo fencing" equipment to improve tracking of response times within the City of Decatur, and has developed a system to optimally monitor staging times. Currently, DAS has an average response time to Code 3 and 4 calls (requiring lights and sirens) and Code 2 calls (no lights or sirens) of 5.32 and 7.81 minutes, respectively. Further investigation should be conducted to determine whether current response times are meeting or exceeding national benchmarks for the size, scope and demographics of Decatur.

The forgoing concerns raised by DMH employees and representatives further appear questionable. No concerns were ever brought to the attention of DAS prior to the public hearing. To HSHS' knowledge, no concerns were ever brought to the attention of DAS or the City Council prior to the acquisition of DAS by HSHS less than three months ago. Finally, as will further demonstrated in Section VI below, those "concerns" voiced by the employees and representatives of DMH are misleading and are not actually representative of the current state of ambulance operations in Decatur.

Despite the implication that DAS is not adequately responding to DMH calls, over the calendar year from July 2017 to July 2018, DAS transported patients to DMH 7420 times, and to HSHS St. Mary's 4738 times. Consistent with federal law, patients still have and will continue to have a choice in which hospital they will be transported to when a DAS ambulance picks them up. HSHS takes its legal and ethical obligations to patients very seriously.

In addition, the 5 stations operated by DAS in Decatur and Forsyth are an average distance of 3.6 miles and 7.8 minutes' drive-time from DMH, while HSHS St. Mary's is an average distance of 4.7 miles and 9.8 minutes' drive time away. Based on these statistics, it is only logical that DMH will continue to be adequately served by DAS, regardless of its parent company's affiliation.

In addition to the quality of service provided by DAS, DAS and HSHS are fully committed to serving the Decatur community, including its most underserved areas. Recently, DAS has begun to develop a minority training program in partnership with the Teamsters and

Rev. Courtney Carson to create a cost-free avenue for underprivileged students to become EMT's. The program requires participants to be on government assistance to qualify and seeks to provide participants with education and an overall higher quality of life. This program is possible because of DAS is a locally-owned business with a mission-based healthcare provider.

VI. HEARING OFFICER'S CONCLUSIONS

1. Whether or not the public is currently reasonably adequately served.

Mr. Mahrt concluded in his written report that "The testimony received at the public hearing indicates that the City of Decatur is not reasonably adequately served with the current emergency medical transportation services. The testimony indicated that the public is currently under served." This conclusion was based on the statistics provided by DMH employees that their emergency transports had increased 12-13% in the last year, that critically injured patients were being transported too slowly, and that 62% of inter-facility transports were delayed. First, objective data maintained by DAS is inconsistent with DMH's assertion that its call volumes have increased 12-13% within the last year. Further, DMH has offered no evidence or testimony regarding the trend of overall call volumes in the City of Decatur.

Second, the allegation by a DMH employee that patients are experiencing 3-4 hour transport and stabilization period appears to be irrelevant, as it is applicable to inter-facility, non-emergent transports that are not governed by the City of Decatur Ordinance. Delays on transports between a transferring and receiving hospital can also result from a variety of factors outside of the control of an ambulance company, including hospital delays in initiating transfer.

Rather, with respect to emergent transports, DAS has an average response time to urgent 9-1-1 calls of 5 minutes and 19 seconds. In addition, the overwhelming majority of responses are under the standard 8-minute response time required by the Ordinance. Thus, it appears that there are a reasonably adequate number of ambulances already in operation within the City of Decatur.

Third, the allegation that there are delays experienced by DMH patients during inter-facility transports (from DMH to a higher level of care facility) is also one that is entirely outside the scope of this Ordinance. Rather, other ambulance services, including Arrow, are already providing inter-facility transports between DMH and other "higher level of care" facilities, and are therefore may be responsible for these delays.

Finally, Decatur's Fire Chief, Jeff Abbott, is on record stating that "Decatur Ambulance Service provided adequate response times and service to the community" in an article published by the Decatur Herald & Review on July 3, 2018. This statement was made three weeks after HSHS acquired DAS, and one day after the date Arrow's application was signed. Therefore, these comments should be taken with the utmost veracity based on their author and timing.

For these reasons, DAS contends that the public is currently reasonably adequately served.

2. Whether convenience and necessity require the proposed service.

Mr. Mahrt concluded in his written report that "Testimony supports a finding that convenience and necessity require the proposed service." He went on to list the factors to consider in determining convenience and necessity which included:

1. The provision of reliable and efficient service to customers;
2. The prevention of unnecessary duplication of services;
3. The protection of the public from inadequate service;
4. The protection of the public from the high cost of service;
5. Compliance with state and local laws;
6. The capability of the service provider to manage and supervise the operation; and
7. Whether or not the Applicant has adequate and an efficient means to operate and whether or not the operator has sufficient financial means to operation.

First, DAS contends that they already provide reliable and efficient service to customers as previously addressed in this Request. Second, if the citizens of Decatur are already reasonably adequately served by DAS, adding a second ambulance service would categorically result in an unnecessary duplication of services, and at a greater cost and increased complexity than is currently provided. Third, DAS contends that its services are not inadequate, as evidenced by their response times, and their continued efforts to ensure that the community has the highest quality of emergency medical service. Fourth, no testimony was presented that the cost of services already provided by DAS is high, and there was no testimony as to the cost of services that Arrow would provide, whether high or low, and the impact on the current EMS and dispatch systems. Fifth, Arrow would not currently comply with the Ordinance because it is believed that the Arrow EMT's are not currently trained in International Trauma Life Support (ITLS) and do not meet the location requirements under the Ordinance.

Mr. Mahrt also noted: "Other factors supporting issuance of a license include the following: an increase in emergency and non-emergency medical transport, delays in the current service, providing customers a choice in medical transport, no evidence of harm to the public from an additional provider, and compliance with all applicable laws. It is my opinion that the Applicant has shown that convenience and necessity require the provision of an additional ambulance service provider in the City of Decatur."

First, the evidence offered to support the conclusion that there is an increase in medical transport was inconclusive at best. Specifically, a 12% increase in transports to DMH over the last year is not symptomatic of the overall need for additional medical transport in the community.

Second, the alleged delays in inter-facility transports are outside the scope of the applicable ambulance Ordinance, and ambulance companies other than DAS have already been providing inter-facility transports to DMH. This can continue without the introduction of a new company providing emergency transport services to the rest of the Decatur community.

Third, providing customers a choice in medical transport is a concern that has never been raised by anyone in the healthcare community until DAS was acquired by HSHS, and since that time, the number of DMH transports remain well above the number of HSHS St. Mary's transports (it would be illegal to do otherwise).

Further, there is evidence of harm to the public from adding an additional provider; namely, that diluting the ambulance service market beyond the means that can be supported by the community endangers the quality of service provided and could reasonably lead to both businesses struggling due to the unnecessary duplication of overhead. Additional harm could result from the increased cost and complexity of dispatching two competing ambulance services within the City. Added complexity could lead to delays which endangers patients' lives in emergency situations, as noted by the representatives from DMH at the public hearing. Finally, DAS estimates that the cost of upgrades to its communication and dispatch systems to accommodate a second ambulance service could cost hundreds of thousands of dollars.

For these reasons, DAS argues that convenience and necessity do not require the proposed service.

3. Whether the location, personnel, equipment and operation of the Applicant comply with the provisions of Chapter 53 of the City of Decatur Code of Ordinances.

Mr. Mahrt concluded in his written report that "Based on the testimony received at the public hearing and the supplemental letter from Mr. Larry Sapp (Exhibit 4), it is my finding that the Applicant complies with or will comply with the requirements of Chapter 53.

The answers provided in Mr. Sapp's supplemental letter are speculative to the extent that he claims Arrow is compliant with the Ordinance's employee qualifications and location requirements, but he previously testified that Arrow will need to hire 36 new employees to manage and operate their prospective Decatur facility. In addition, there was no indication where these 36 employees would be hired from, as there is a shortage of EMTs in Central Illinois already.

4. Whether the license should be granted.

Mr. Mahrt ultimately concluded that "A License should be issued by the City of Decatur to Arrow Ambulance LLC for the provision of ambulance services within the City of Decatur."

Objective data and public oversight of emergency ambulance service just began. On August 20th Decatur updated its ambulance license to centralize dispatch and to have objective data on response times for ambulance service. Not even a month has passed to review the data and provide an accurate perspective of the response times and fair oversight. The rush to add a new ambulance service without that objective data is very concerning. As such, DAS requests that the Council conduct a further investigation, with adequate data from the new rules, to objectively determine whether the public is being adequately serviced.

VII. CONCLUSION

For all of the reasons previously stated above, DAS respectfully requests that the City Council of Decatur conduct further investigation into the issues raised in this request, and vote against approving his recommendation.