Township Officials of Illinois

LAWS & DUTIES HANDBOOK

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Ancel Glink P.C.

Chicago, Bloomington, Naperville, Vernon Hills, Crystal Lake, Moline

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FOREWORD

This tenth edition of the Township Officials of Illinois (TOI) Laws and Duties Handbook is designed to be a practical and convenient resource tool for township officials in Illinois. TOI, in conjunction with the law firm of Ancel Glink, P.C., compiled this book in an effort to assist township officials with their statutory responsibilities. We thank the attorneys at Ancel Glink, P.C. for donating their time to improve township government and for performing all of their work on this book without compensation. We hope you will find this handbook an invaluable tool as you approach your township duties. Please contact TOI to purchase additional copies or if you have questions. If you are interested in a formal legal opinion we recommend you speak with your township attorney or visit www.ilga.gov.

Sincerely,

Jerry B. Crabtree
Executive Director
Township Officials of Illinois

DEDICATION

We dedicate this book to Bryan E. Smith and Robert A. Porter. Bryan served as the Executive Director of the Township Officials of Illinois from 1987 until his recent retirement. Under Bryan's leadership, this Handbook was greatly expanded, and Illinois townships have continued to grow and adapt to the changing times.

Bob Porter served as the Supervisor of Lemont Township. He also serves as the President of the Township Officials of Illinois from 2002-2004. It was Bob's idea to expand the previous version of this Handbook back in 2003 to help make this the resource for township officials that it is today. Bob recently retired from his post-governmental position as Director of Special Projects for Ancel Glink, P.C.

We thank both Bryan and Bob for their passion for and contributions to Illinois township government. Township government in Illinois is better because of their service.

INTRODUCTION TO THE 2022 EDITION

Governing during a pandemic coupled with civil unrest presented new challenges to township government – but you survived! We are pleased to present this 2022 edition to you, the resilient township officials of Illinois.

While many things remain the same with township laws, townships continue to grow and evolve to meet new challenges. Use of technology has increased, and townships are growing to embrace technological changes and the benefits that technology provides. Townships are using new and creative way to expand and provide services through the use of intergovernmental agreements and social service contracts. In some instances, consolidation has occurred and townships have responded responsibly and efficiently. In other instances, townships have defeated consolidation attempts by demonstrating their value to constituents. Many years ago, the Township Officials of Illinois first published the *Guide and Duties of Township Officials Handbook,* summarizing township laws and procedures. Township officials throughout the State relied on this guide to explain some of the more complicated aspects of township law. Since 2003, we have been honored to work with the Township Officials of Illinois to prepare and update the *Township Officials of Illinois Laws and Duties Handbook,* on a volunteer basis, making this intricate, complex field of law more manageable and understandable. The success and positive feedback from previous editions was enormous, and we recognize an ongoing benefit to updating this book regularly to keep township officials abreast of changes in the laws applicable to their duties. Accordingly, it is with great pleasure that we at the law firm of Ancel Glink P.C. offer this 2022 Edition to the hardworking township officials of the State of Illinois.

Township government is one of the oldest forms of government in the State of Illinois, originating when the first township laws were adopted in 1874. Often, members of the public do not understand the role of township government within a state scheme that includes various units of local government such as cities, villages, counties, park districts, and other special districts. Despite the existence of these newer and expanding forms of local government, however, townships continue to provide valuable services and general assistance, road maintenance, and assessment.

We hope that this handbook will provide you with a starting point for finding the knowledge and guidance you seek. While a handbook this size cannot supply the answer to every question that might arise, we have covered a broad range of topics that township officials may encounter. Furthermore, this handbook is no substitute for the counsel of an attorney with township law experience. We highly suggest that you contact a township attorney prior to acting on any of the materials contained in this handbook. Many times, simple problems can turn into intense litigation without such assistance. Townships who use township attorneys generally find that it has been worth it. For additional information about Ancel Glink, P.C.,, please contact us at (312) 782-7606 or visit our website at www.ancelglink.com.

We have structured this handbook to be useful to both experienced and new township officials and have attempted to answer the most commonly-asked questions relating to township problems. In addition, we have supplemented the material with references to applicable court decisions and State statutes (all statutory citations are to the *Illinois Compiled Statutes*).

Many townships find it helpful to have a copy of this handbook available at township board meetings to provide fast answers or facilitate quick referral to an appropriate section of the statutes or to relevant case law. The *Township Officials of Illinois Laws & Duties Handbook* is intended to provide the "rules of the road" of township government. As for the wisdom and compassion necessary to apply these rules to difficult situations, we rely on you, as the voters have put their trust in you!

This handbook is a result of the joint effort of the Township Officials of Illinois and our attorneys and staff at Ancel Glink. This edition would not have been possible without the invaluable knowledge and suggestions provided by TOI Executive Director Jerry Crabtree. We also give credit for the idea for this Handbook to former TOI President Robert A. Porter, who has just retired from his position of Director of Special Projects with Ancel Glink.

Much of the material in this book is a result of the collaborative efforts of many Ancel Glink attorneys and has developed over the years as we have educated township officials. This edition would not have been accomplished without the hard work of several of our attorneys, law clerks and paralegals who dedicated their non-existent free time to the production of this manual. Attorney Yevgeniy “Eugene” Bolotnikov

performed significant work on this edition, and we thank him. Our colleague, Erin Monforti also provided invaluable research for us.

We prepared this handbook on a volunteer basis, and our best encouragement and reward remains the countless public officials who have told us that our advice has helped them to better serve their citizens.

While we strive to present accurate information, at times laws change or typographical errors occur. If you would like to offer comments or suggestions for the next edition of the Handbook, please contact us at (312) 782-7606 or e-mail us at kkrafthefer@ancelglink.com. For updates on subjects covered in the handbook between editions, please visit www.ancelglink.com. Finally, for downloadable versions of many forms and legislation updates, please visit: www.toi.org.

I would like to thank Judge Michael J. Chmiel for his friendship, wisdom, insight and perspective related to this edition, my son, Kyle C. Krafthefer, who gave up quality time with me during the drafting of this edition, but also who makes fighting for the future of good government worthwhile, and most of all, I thank Him upon whose shoulders the government rests. Isaiah 9:6.

Thank you for your service to the citizens of Illinois. Go forth and accomplish great things!

Soli Deo Gloria,
Keri-Lyn J. Krafthefer

February, 2022

ABOUT THE AUTHORS

The law firm of Ancel Glink, P.C., represents public entities, including townships, municipalities, park districts, school districts, and special districts throughout the State of Illinois. The firm has been representing governmental entities for over 80 years and has offices in Chicago, Vernon Hills, Crystal Lake, Naperville, Moline, and Bloomington. Ancel Glink is a medium-sized law firm with approximately 40 attorneys, all of whom focus on addressing legal issues involving public entities. Several attorneys at the firm have served on township boards or have held other elected local governmental offices and therefore understand the board's role in policy-making and the difficulties that arise on a daily basis. Our law firm is committed to educating public officials throughout the State of Illinois and also authors the *Illinois Municipal Handbook*, a publication of the Illinois Municipal League, as well as the *Illinois Park District Law Handbook*, a publication of the Illinois Association of Park Districts. We also produce the *Township Trustees' Operations Manual, the Township and Road District Levy Handbook, Financial Procedures for Illinois Townships, Freedom of Information Act and Open Meetings Act Resources, which are available for purchase from the Township Officials of Illinois, and the Tort Immunity Handbook* and *Economic Development Toolbox for Municipal Officials, Local Government News, School Law Briefing, Newly-Elected Officials Guide, Labor Law Handbook, and Zoning Tools of the Trade*. Please visit our website, www.ancelglink.com, to download or obtain further information on these publications.

Keri-Lyn J. Krafthefer is a shareholder and senior partner with Ancel Glink. Keri-Lyn was named by Leading Lawyers as one of the top ten female attorneys practicing governmental, administrative, and lobbying law in Illinois. She has also been named on the list of Illinois Super Lawyers and is one of the top 50 female Super Lawyers in the State, as well as having been named an Illinois Super Lawyer representing cities and villages for each year that such distinction has been awarded. Throughout her legal career, Keri-Lyn has concentrated her practice in the representation of units of local government throughout the State of Illinois, including townships. Keri-Lyn has counseled numerous townships regarding the issues that arise daily, including matters related to board practices and procedures, personnel, labor, employment, intergovernmental cooperation, open space, election law and governmental finance, as well as in litigation. Keri-Lyn has authored several chapters of the Township Clerk's Handbook; helped edit the Illinois Township Supervisor's Guide; has spoken at various zone

meetings for the Township Clerks of Illinois, providing an overview of township clerks' responsibilities; and has been a speaker at the annual conference of the Township Officials of Illinois and at TOI's newly-elected officials seminars. Keri-Lyn also formerly served as a Township Trustee in York Township. She received her undergraduate degree in Political Science from the University of Illinois and her juris doctor degree from the University of Illinois-Chicago School of Law, when it was known as the John Marshall Law School.

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FIVE SURPRISES ON BEING ELECTED

1. THERE IS NO "USER'S GUIDE" TO LOCAL GOVERNMENT. An elected official takes an oath of office which, in part, states that "I will faithfully discharge the duties of the Office of . . . to the best of my ability." (Illinois Constitution, Article XIII, Section 3.) Unfortunately, most local governmental offices have no easy reference for a list of one's duties. One of the best places to look is within the *Township Officials of Illinois Laws & Duties Handbook*. Another valuable resource is the Township Officials of Illinois' website at www.toi.org. The laws of the State of Illinois dealing with townships are found in Chapter 60 of the Illinois Compiled Statutes, which can be found at www.ilga.gov/legislation/ilcs/ilcs.asp.

2. I DON'T HAVE AS MUCH POWER AS I THOUGHT. Supervisors and trustees are often surprised to discover that their power is limited and, in part, derived from the ability to implement legislation. Although supervisors are the chief executive officers of the township, they have no independent power to expend funds, make purchases, hire employees or officers, or direct employees to act inconsistently with legislated mandates. Supervisors discover that without a cooperative legislative body, gridlock extends beyond the Washington Beltway. Individual trustees discover that they are only part of a legislative body and possess no power to direct employees to do anything. Like the supervisors, they will discover that any efforts to bind the township in their own financial whims can produce little other than personal liability. Trustees, in order to achieve their objectives, must act through the exercise of legislative power and be able to overcome executive vetoes.

3. I DON'T LIKE MY COMMITTEE ASSIGNMENT. Many townships operate through the use of legislative committees. In some townships, many of the township board members are dissatisfied with their committee assignments or unhappy with the chairmen of the committees chosen by the supervisor. They feel that this situation cannot be changed. Actually, Illinois State law has few provisions regarding committees. The establishment or non-establishment of committees is up to the specific township and can be accomplished by ordinance. Trustees who are dissatisfied with the existing manner in which committees function have the power to modify the ordinances. An ordinance can even provide that the township board chooses its own committees and their members and chairmen. A newly-elected official should determine whether any existing ordinances deal with this issue. If there are existing ordinances, the

existing local law can only be modified by an amendment or repeal of the existing ordinances.

4. I CAN'T SNEAK EMBARRASSING DISCUSSIONS INTO COMMITTEE MEETINGS. In some townships, officials know quite well that all meetings of the township board must be held in open session and that the items that can be discussed in closed session are limited. The officials in some townships, however, do not understand that the Open Meetings Act applies to the meetings of all public bodies, including committee meetings, and informal meetings of the requisite number of public officials gathered for the purpose of discussing public business. Any time that a quorum of any township body meets to discuss public business, the township must comply with the Open Meetings Act. Such a group may itself go into closed session but only to discuss those subjects authorized by the Open Meetings Act.

5. NOW THAT I SEE HOW MUCH TIME I AM EXPECTED TO SPEND ON THIS JOB, IT'S TIME TO PLAN A SALARY INCREASE. Once township officials appreciate how difficult their jobs may be and what expenses are involved in fulfilling the public needs, they understand that the established salary will hardly cover the cost of aspirin or coffee expenses required for late meetings. For all elected officials, however, the salaries associated with that office cannot be increased during the elected official's term. In fact, state law requires that the salaries must be fixed at least 180 days before the beginning of the elected officials' terms. The courts have held that the reimbursement for expenses actually incurred in the performance of duties is not part of a salary and may be paid to governmental officials whose salary is fixed. Elected officials should keep careful records of the actual expenditures eligible for reimbursement: first, because a level of reimbursement higher than required to actually compensate for expenses incurred would violate the prohibition against salary increase; and second, because such payments could constitute income under federal tax law.

"There are two kinds of township officials who create problems for their township:

New Ones who know nothing about township government;
Old Ones who think they know everything about it."
— A Quote (source unknown)

DILLON'S RULE

Townships and other units of local government are regulated by provisions of Article VII, Sec. 8 of the 1970 Illinois Constitution, which states in part, these governments "shall have only powers granted by law." In the late 1800s, John F. Dillon, a Supreme Court Justice in Iowa, developed this legal principle, known as Dillon's Rule. In plain language it means that if no statute permits a township or road district (or official) to perform a function or service, the government or official may not carry out that function regardless of how much it is needed or wanted. If the statutes are silent (do not mention) regarding a particular power or function, it does not exist. If the power doesn't exist, the government (or official) may not perform the service.

I. TOWNSHIP GOVERNMENT IN ILLINOIS

Township government is one of the oldest forms of government in Illinois. While the viability of the continued role of township government has been questioned recently, those who work with townships and receive services from them have no doubt about their importance. Townships perform three mandatory functions: administering a general assistance program to qualifying residents, maintaining township road district highways and bridges, and appraising property values in all counties other than Cook County. Townships also are given a variety of statutory responsibilities that are somewhat lesser known but equally important. For example, they may, among other services, provide senior services, conduct youth programs, appoint fire district trustees, and maintain cemeteries; additionally, township trustees serve as the township's official "fence viewers." The various powers of townships are discussed in detail in other sections of this book.

Townships have been given various powers that they may exercise depending upon the needs of their constituents and the activism of their officials. Each township has the corporate capacity to exercise the powers expressly granted to it or those necessary implied from these express grants, and no others. 60 ILCS 1/85-10. See also Grassini v. DuPage Twp., 279 Ill. App. 3d 614, 665 N.E.2d 860 (3d Dist. 1996) (holding that a township may exercise only those powers conferred upon it by statute). This limitation is called "Dillon's Rule" and affects all Illinois governments except home rule municipalities and counties. Like other non-home rule units, townships have no inherent powers but only those granted to them by the constitution or authorized by statute. Diversified Computer Servs., Inc. v. Town of York, 104 Ill. App. 3d 852, 433 N.E.2d 726 (2d Dist. 1982). Prior to engaging in any act, therefore, a township must make sure that it possesses the authority to engage in such an act. Townships are conferred their powers through the Illinois Township Code (60 ILCS 1/1 et. seq.), the 1970 Illinois Constitution and through various other statutory and common laws. Special statutory sections govern the powers and the functions of township officers.

Townships exercise their various powers through either the corporate authorities of the township (the electors) or the township board.

A. Township Powers

- A township may sue and be sued.

- A township may purchase any real estate or personal property for public purposes by the use of installment contracts providing for payment over a period of not more than 20 years for real estate and not more than 10 years for personal property.

- A township may construct a town hall under an installment contract providing for payment over a period of not more than 20 years.[1] See Chapter III(C)(33) for additional information.

- A township may make all contracts necessary in the exercise of township powers. A township may expend or contract for the expenditure of any federal funds it is given for any purpose for which a township can expend tax revenues.

- A township may acquire land or any interest in land located within its township limits. It may acquire the land or interest by gift, purchase, or otherwise, but not by condemnation, except in special instances when townships are expressly given the power of condemnation, such as to acquire parks, open space, or cemeteries.

- A township may also acquire (by purchase, gift or legacy) and hold personal property and may sell and convey that property.

- A township may improve land for industrial or commercial purposes and may donate and convey improved land or interest in land to the Illinois Finance Authority.

- A township may receive funds under the federal Housing and Community Development Act of 1974 and may expend or contract for the expenditure of those funds and other township funds for certain specified activities.

- A township may establish reasonable fees for recreation and instructional programs sponsored by the township.

- A township may borrow money (i) from any bank or financial institution if the money is to be repaid within 10 years from the time it is borrowed, or (ii) with the approval of the

[1] Payment period extended from not more than 10 years to "not more than 20 years." See Public Act 097-0549, effective 08/25/2011

highway commissioner, from a township road district fund, if the money is to be repaid within one year from the time it is borrowed.

- A township may administer a recycling program and adopt rules for recycling programs in unincorporated areas.

60 ILCS 1/85-10, 60 ILCS 1/85-13, 60 ILCS 1/240-5. These and other powers are expanded upon and discussed throughout the remainder of this book.

B. Powers Exercised by the Corporate Authorities

Unlike municipalities, which have their municipal boards as their corporate authorities, the "corporate authorities" of a township are officially the electors meeting at an annual or special town meeting. In the Township Code, the Illinois General Assembly has given the electors of a township, duly assembled, certain powers that they may exercise. These powers are discussed in detail in Chapter III, regarding Annual and Special Town Meetings.

C. Powers Exercised by the Township Board

The board of township trustees (township board) implements and carries out orders prescribed for it by the electors assembled at a town meeting, either annual or special, as well as other specific functions set forth by statute. (Remember, township officials have only those powers that are conferred on them by statute, either expressly or by necessary implication. Peoria v. O'Connor, 85 Ill. App. 3d 427, 408 N.E.2d 11 (3d Dist. 1980), *aff'd in part, rev'd in part*, 85 Ill.2d 195, 421 N.E.2d 912 (1981).)

1. Township Board Members

In each township, the township board consists of the supervisor and four other members elected at large from the township. The town supervisor acts as chairman of the board, and the township clerk keeps the records of the board. Each person on the township board casts one vote. The clerk is not a voting board member, except in the case of a tie vote to fill a vacancy in office. 60 ILCS 1/80-5.

2. Auditing Bills

The Township Code generally provides that the township board must meet at the township clerk's office for the purpose of examining and auditing the township and road district accounts before any bills (other than general assistance, obligations for Social Security taxes as required by the Social Security Enabling Act, and wages that are subject to the Illinois Wage Payment and Collection Act, or other expenses determined by the township board by resolution) are paid, provided that payments made pursuant to a board resolution must be reviewed and verified at the next meeting. 60 ILCS 1/80-10. With respect to the location of the meeting, however, this provision has been held discretionary. People ex rel. Painter v. Chi., B. & Q. R. Co., 314 Ill. 544, 145 N.E. 729 (1924).

3. Special Township Board Meetings

The board is permitted to meet at other times as it determines necessary. 60 ILCS 1/80-10. Upon the request of the supervisor or any two board members, the township clerk must call a township board meeting at the time requested and provide at least 48 hours notice; however, a meeting in a true emergency situation can be called on shorter notice. The township board may adopt rules not inconsistent with the Township Code to govern its meetings. These rules may define excused absences and provide that when a township supervisor or trustee has five or more consecutive unexcused absences, the township board is authorized to declare a vacancy in the office. 60 ILCS 1/80-10(c).

4. Fire Protection District Appointments & Collection for Rescue Services

One unique function of the township board is appointing trustees to the Fire Protection District in certain instances. If the Fire Protection District lies wholly within a single township but does not also lie wholly within a municipality, the township board of that township shall appoint the trustees for the Fire Protection District, but no township official who is eligible to vote on the appointment shall be eligible for such appointment. 70 ILCS 705/4(a)(1). If the Fire Protection District is wholly contained within a municipality, the governing body of the municipality shall appoint the trustees for the district. 70 ILCS 705/4(a)(2). If the district is wholly contained within a single county but does not lie wholly within a single township or municipality, the trustees for the Fire Protection District shall be appointed by the presiding officer of the county board, except that in Cook County, two trustees for the district shall be appointed

by the township board that has the greatest population within the district as determined by the last census. The township board shall also appoint the remaining trustee if no other township comprises at least 10% of the population of the district. If only one other township comprises at least 10% of the population of the district, then the board of that township shall appoint the remaining trustee. If two or more other townships each comprise at least 10% of the population of the district, then the boards of those townships shall jointly appoint the remaining trustee. No township official who is eligible to vote on the appointment shall be eligible for the appointment. 70 ILCS 705/4(a)(3).

Additionally, townships that provide fire protection services are now permitted to fix, charge, and collect reasonable fees for technical rescue services provided by the township. However, the total amount collected may not exceed the reasonable cost of providing the technical rescue services but may include charges for personnel and equipment costs. 60 ILCS 1/200-14b.

Residents of a township that provides fire protection services who intend to sell or purchase a private or semi-private water system have additional obligations. A township that provides fire protection services shall receive notice of the sale of a private water system or semi-private water system from the individuals or entities selling and purchasing the water system. The notice to the township shall include the status and capacity of the water system and the ability of the water system to be used for fire protection. 60 ILCS 1/200-14c(b). A township that provides fire protection services shall also receive notice from the owner of a private water system or semi-private water system if changes to the water system would affect fire protection services to areas served by the water system. 60 ILCS 1/200-14c(c).

5. Clean-Up of Weeds, Grass, Trees and Other Nuisances

The Township Board may provide for the cutting of weeds or grass, the trimming of trees or bushes, the removal of nuisance bushes or trees, or the maintenance of a retention pond or detention pond on any real estate in residential areas of the township no sooner than 7 days after notifying the owner by mail of the intended action, if the owners refuse to correct the problem during that period. The Township Board may collect from the owners reasonable costs for taking such action. This cost is a lien on the affected property if the lien is recorded with the county within 60 days after the costs are incurred. The township may also institute a civil action to recover costs. 60 ILCS 1/105-15. For additional information on

the required contents of the lien document, effect on subsequent purchasers of the property, and the release of the lien upon payment, see 60 ILCS 1/105-15.

6. Unsafe or Abandoned Buildings

Another unique function of township boards is to, in certain instances, demolish, repair or enclose unsafe or uncompleted and abandoned buildings within the territory of the township. First, the board must formally request the county board to initiate proceedings regarding property located within the township but outside the territory of any municipality. Only after the county board declines may the township undertake these activities and may also remove garbage, debris, and other hazardous, noxious, or unhealthy substances or materials from such buildings. Townships may obtain liens against such properties, and may foreclose on such liens in a similar fashion to that of the mortgage foreclosure process. The township can recover the costs of foreclosure from the owner or owners of the real estate in question. In petitioning to declare a property "abandoned," a township board must prove that (1) the property has been tax delinquent for 2 or more years, or bills for water service have been outstanding for 2 or more years, (2) the property is unoccupied by persons legally in possession, and (3) the property contains a dangerous or unsafe building. If the property is declared abandoned by the court, notices must be sent out to all interested parties stating that the property will be transferred to the township unless, within 30 days, the record owner or another interested party appears. If no party comes forward, the township may petition the court to issue a judicial deed to the county. This deed extinguishes all existing ownership interests in the property including tax liens and other liens. 60 ILCS 1/85-50.

II. TOWNSHIP OFFICERS

A. The Township Supervisor

The township supervisor is the chief executive officer of the township. 60 ILCS 1/70-15. The supervisor serves as supervisor of General Assistance and chairman of the township board. 60 ILCS 1/70-50. The supervisor is a voting member of the township board. As discussed below, the supervisor has numerous financial reporting responsibilities, is the treasurer of all township funds including cemetery funds and water system funds, and is the ex officio treasurer of the road and bridge funds. For additional information regarding the powers and duties of township supervisors, you may review the Illinois Township Supervisor's Guide, published by the Township Officials of Illinois.

1. Compensation

The township board sets the supervisor's salary. 60 ILCS 1/65-20(a). The supervisor's salary is also compensation for the services the supervisor provides as supervisor of General Assistance. The salary must be set in advance under 60 ILCS 1/65-20(a). The township board should take this dual role into consideration when setting the supervisor's salary and should set a salary sufficient to cover the duties of both jobs. In addition to the salary established by the township board, the supervisor also receives a salary as treasurer of the road and bridge funds, which cannot be less than $100 nor more than $1,000 a year and is paid from the general township fund. 605 ILCS 5/6-207(d). In addition, whenever a county board requires any township supervisor to oversee the conduct of any election necessitating the personal attendance of such supervisor at two or more polling places, the county board must compensate the supervisor at the same rate as it pays judges of election. 10 ILCS 5/13-10.1. Similarly, when township supervisors serve on county-wide Public Aid Committees (see sub-section 6 of this section, entitled "General Assistance"), the township is responsible for travel expenses incurred by the supervisor, any *per diem*, and any other expenses incident to such meetings. 305 ILCS 5/11-8.

2. Bonds

The supervisor of the township, before receiving any funds under this Article or entering upon the duties of the office, shall execute (i) a good and sufficient bond with two or more sureties approved by the board of managers and filed with the board for the benefit of the township in double the amount that will probably come into the supervisor's hands by

authority of the Article if individuals act as sureties, or (ii) a good and sufficient bond with a surety company authorized to do business in Illinois as surety approved by and filed with the board for the benefit of the township in the amount that will probably come into the supervisor's hands by authority of this Article. 60 ILCS 1/150-45. For purposes of determining the amount, the bond should cover the amount in the supervisor's possession at the end of the preceding term. Morley v. Metamora, 78 Ill. 394 (1875). The bond must be conditioned on the faithful discharge of the supervisor's duties and must require that the supervisor will safely keep and pay over all money entrusted to the supervisor. Any person temporarily appointed to perform the clerical functions of a supervisor must, before performing those functions, give bond in the same manner and amount and subject to the same conditions as are required of the supervisor. 60 ILCS 1/70-5.

A township located in a county with the township form of government and a road district comprised of that township may jointly obtain, from a risk management pool of townships, any official bonds required by law to be furnished by officers of the township or road district. A road district located in a county without the township form of government may obtain, from a risk management pool of townships and road districts, any official bonds required by law to be furnished by officers of the road district. 5 ILCS 270/1.

The bond must be approved by the township clerk and filed in the clerk's office with the clerk's approval endorsed on it. 60 ILCS 1/70-5. However, the clerk's receipt of the bond amounts to an approval of it. Purcell v. Bear Creek, 28 N.E.1085, 138 Ill. 524 (1891). Whenever the township clerk determines that the bond has been forfeited, the clerk is required to institute suit against the supervisor. If the clerk fails or refuses to institute a suit, any person interested in the matter may institute a suit.

3. Financial Duties

The supervisor receives and pays out all monies raised in the township for defraying township charges, except those raised for the support of highways and bridges and for township library purposes. 60 ILCS 1/70-15. The supervisor's financial duties are mentioned in this section, but see Chapter IX on Township Financial Issues for a further discussion of township financial issues.

a. Accounts of Receipts and Expenditures

The supervisor must keep a just and true account of the receipts and expenditures of all monies that come into the supervisor's possession by virtue of the office in a book to be provided for that purpose at the expense of the township. 60 ILCS 1/70-25. The book must be delivered to the supervisor's successor in office.

b. Annual Financial Statement

Within 30 days before the annual town meeting, the supervisor must prepare and file with the township clerk a full unaudited statement of the financial affairs of the township, showing

1. the balance (if any) received by the supervisor from his or her predecessor in office or from any other source;

2. the amount of tax levied the preceding year for the payment of township indebtedness and charges;

3. the amount collected and paid over to the supervisor as supervisor;

4. the amount paid out by the supervisor and on what account, including any amount paid out on township indebtedness, specifying the nature and amount of the township indebtedness, and the amount paid on the indebtedness, the amount paid on principal, and the amount paid on interest account; and

5. the amount and kind of all outstanding indebtedness due and unpaid, the amount and kind of indebtedness not yet due, and when the indebtedness not yet due will mature. 60 ILCS 1/70-15.

The statement is recorded in the record book of the township as soon as it is filed. 60 ILCS 1/70-30. The supervisor must also give each township board member a copy of the annual statement filed in accordance with Section 1 of the Public Funds Statement Publication Act (30 ILCS 15/1) as soon as possible after filing the statement. Until January 1, 2015, township clerks were required to read the annual financial statements out loud at the annual town meeting. However, a legislative amendment specifies that clerks no longer have to do so, provided that

copies of the financial statement are available for review by the electors at the meeting. 60 ILCS 1/70-15.

c. Annual Treasurer's Report

The Public Funds Statement Publication Act (30 ILCS 15/1 to 15/6) requires the supervisor of every township that has received and dispersed public funds to prepare and file an Annual Statement of Receipts and Disbursements, commonly known as the "Annual Treasurer's Report." There are a number of separate publishing and filing steps the supervisor must follow. However, effective January 1, 2012, P.A. 97-0146 allows townships to publish a "notice of availability" instead of the full Treasurer's Report. Please refer to Chapter IX(G) for a full discussion of the Annual Treasurer's Report.

d. Presentation of Accounts to the Township Board/Payment of Bills

The supervisor receives all accounts that may be presented against the township and presents them to the township board at or before its next meeting. 60 ILCS 1/70-35. For more information on timing and payment, see Chapter IX of this Handbook.

4. Treasurer of Cemetery Funds

The township supervisor is treasurer of cemetery funds. 50 ILCS 610/1c.

5. Treasurer of Waterworks and Sewerage Systems Funds

The township supervisor acts as the ex officio treasurer and the custodian of all funds derived from the issuance and sale of bonds under township waterworks and sewerage systems and of all income and revenue derived from the operation of the system. Before the supervisor receives any funds, he or she must post with the township board, subject to their approval, a separate corporate surety bond in an amount determined by resolution of the township board. The supervisor must keep the proceeds of bonds issued and revenues derived from the operation of the system separate and apart from all other funds that come into the supervisor's possession on behalf of the township. The supervisor must deposit the proceeds derived from the sale of bonds and the income and revenues derived from the operation of the system in separate bank or savings and loan association accounts in a depositary designated by the township board for that purpose. 60 ILCS 1/205-35.

6. General Assistance

Township supervisors act as *ex officio* Supervisors of General Assistance of their townships. 305 ILCS 5/12-21.2. In an incorporated township that has superseded a civil township, the supervisor of such incorporated township acts as ex officio Supervisor of General Assistance. The governing body of the incorporated township may, by ordinance, provide for the appointment of other employees as may be necessary to provide public aid. 305 ILCS 5/12-21.4.

General assistance funds cannot be transferred to any other funds. In order to be eligible for State Aid funds, a township must levy a .10% tax, or on the day of levying, levy enough additional tax to make .10%. To qualify for state funds to supplement local funds for public aid purposes, a local governmental unit must, except as otherwise provided in this section of the Public Aid Code, levy (within the time that such levy is authorized to be made) a tax of an amount that, when added to the unobligated balance available for such purposes at the close of the fiscal year preceding the fiscal year for which the tax is levied, will equal .10% of the last known total equalized value of all taxable property in the governmental unit. 305 ILCS 5/12-21.13. General assistance taxes are authorized by 60 ILCS 1/235-20.

When you levy general assistance taxes, be careful that you are not reserving too many of them, or you could be subject to a tax rate objection. Township funds, including, but not limited to, general assistance funds and excluding the township's capital fund, shall not exceed an amount equal to or greater than 2.5 times the annual average expenditure of the previous 3 fiscal years. 60 ILCS 1/85-65. If you have more than two-and-a-half times your annual budget, your levy is likely too high. Review these calculations with your township attorney.

If the Supervisor of General Assistance defaults and is in arrears with the governmental unit or has misused, misappropriated, or converted to his or her own use or the use of any other person any of the funds of the unit or is guilty of any other misconduct in office, the township board may remove the township supervisor as Supervisor of General Assistance and appoint a suitable person for the job. For townships with populations of 4,000 or more, upon written request of the township supervisor, the township board may appoint a Supervisor of General Assistance who is a resident of such township and fix his or her compensation and term of office, which shall not exceed the term of the board. 305 ILCS 5/12-21.10.

Note that township supervisors may also serve on their county-wide Public Aid Committees. The county Public Aid Committee handles appeals by applicants or recipients of aid for general assistance under 305 ILCS 5/6-1. Except for in Cook County, this committee consists of the Chairman of the County Board and 4 members who are township supervisors of general assistance. The members are appointed by the Chairman with the advice and consent of the county board. The Cook County Townships Public Aid Committee consists of 2 township supervisors and three persons knowledgeable in the area of General Assistance. For more information on eligibility of Cook County township supervisors, see 305 ILCS 5/11-8(2). Townships must pay for all activities incident to their township supervisor's attendance at these county-wide meetings; these include per diem and travel expenses. As is noted, *infra*, township supervisors acting in this county-wide capacity are immune from personal liability in connection with their service on the committee to the same extent that a judge is immune from personal liability in connection with his or her duties as a judge. 305 ILCS 5/11-8.

7. Appointments

Township supervisors have the ability to appoint certain township officers and employees, including the following:

a. Township Attorney

The supervisor, with the advice and consent of the township board, may appoint a township attorney. 60 ILCS 1/70-37. The township board sets the compensation of the township attorney, who is not considered a township employee but rather an independent contractor. 60 ILCS 1/100-5. The township attorney also serves as the attorney for the road district, unless the township board has authorized the highway commissioner to hire a separate attorney or unless there is a conflict between the township and the highway commissioner. 60 ILCS 1/100-5(c). *See also*, Newport Twp. Rd. Dist. v. Pavelich, 2012 IL App (2d) 111317.

b. Collector of Water and Sewerage System

The supervisor, by and with the consent of the township board, may appoint a collector to collect the charges for the use and service of the system. The collector's duties, term of office, compensation, and bond for faithful performance of his or her duties must be fixed by ordinance. The collector's compensation cannot be increased during the collector's term of office. 60 ILCS 1/205-115.

c. General Assistance Staff

The supervisor, as Supervisor of General Assistance, may appoint such other employees as may be necessary to provide public aid and may prescribe their compensation and duties. 305 ILCS 5/12-21.2.

8. Prosecute for Penalties

The supervisor prosecutes all penalties or forfeitures given by law to the township or for its use and for which no other officer is especially directed to prosecute, except as may be otherwise directed by the electors at a township meeting. 60 ILCS 1/70-20.

9. Supervisors in Cook County

The supervisors of townships in Cook County perform the same duties as supervisors of townships in other counties except that they cannot be members of the county board or exercise any of the powers of county board members. Supervisors in Cook County also have the same compensation for their services prescribed by law for similar services rendered by other township supervisors. Supervisors may serve as members of the Cook County Public Aid Committee but shall not receive additional compensation for doing so. 60 ILCS 1/70-45. Such supervisors, however, may be eligible for *per diem*, travel expenses, or other expenses incident to serving on a Public Aid Committee (see section A.1. of this Chapter).

10. Penalties for Non-Performance

If any supervisor refuses or willfully neglects to perform any of the duties of the office, he or she must pay to the township the sum of $50 and is disqualified to act as the supervisor of the township. 60 ILCS 1/70-40. The township board does not have the authority, however, to evaluate the supervisor's performance and to make a determination that the supervisor should be disqualified. Bellflower Twp. v. Kumler, 229 Ill. App. 3d 756, 593 N.E.2d 1067, 171 Ill. Dec. 247 (4th Dist. 1992). Instead, the circuit court must make the initial determination of whether the supervisor should be disqualified based on willful neglect. This process obviously protects supervisors from being found disqualified by politically hostile boards.

If the Supervisor of General Assistance defaults and is in arrears with the governmental unit, or has misused, misappropriated, or converted to his or her own use or the use of any other person any of the funds of the unit, or is guilty of any other misconduct in office, the township board

may remove the township supervisor as Supervisor of General Assistance and appoint a suitable person for the job. For townships with populations of 4,000 or more, upon written request of the township supervisor, the township board may appoint a Supervisor of General Assistance who is a resident of such township and fix his or her compensation and term of office, which shall not exceed the term of the board. 305 ILCS 5/12-21.10.

The township board may declare a vacancy in the office of township supervisor or trustee if the supervisor or trustee has 5 or more consecutive unexcused absences from regularly scheduled township board meetings. 60 ILCS 1/80-10(c). See section O in this chapter.

B. Township Trustees

The board of township trustees carries out orders prescribed for it by the electors assembled at a town meeting. The trustees are the legislative arm of the township, setting policy and procedure for the township supervisor to administer. They also have some duties that they must carry out as ordered directly to them by the General Assembly.

In each township, the township board shall consist of the supervisor and four other trustees elected at large under 60 ILCS 1/50-5. The supervisor shall be the chairman of the township board and has one vote as a member of the board. 60 ILCS 1/80-5. To be eligible for the office of township trustee, a person must be a legal voter of the township and have lived in the township for at least one year prior to election or appointment. 60 ILCS 1/55-5.

The responsibilities of the trustees are numerous, and the trustees are critical to the proper functioning of the township. They have major roles in auditing township bills, attending to annual budgeting and levy responsibilities, spending township funds, compensating township officers, appointing fire protection district trustees, and many other township functions. Throughout *Laws and Duties*, the various roles of the trustees in both their individual and collective capacities are thoroughly discussed whenever the term "township board" is used.

C. The Township Clerk

The township clerk is the clerk for the township board. Township clerks do not vote, except in the case of a tie vote to fill a vacancy in a township office. 60 ILCS 1/80-5. The clerk is the keeper of the township's records, the clerk of all town meetings, and the ex officio clerk for the

highway commissioner and must attest to payouts issued by the township supervisor from the township treasury. For an in-depth description of many topics that town clerks must address, refer to the Town Clerk's Manual, which is available through the Township Clerks Association of the Township Officials of Illinois.

1. Township Meetings/Minutes

One of the important responsibilities of the township clerk is to keep minutes of all town meetings and township board meetings. 60 ILCS 1/40-10. For a detailed discussion of what the minutes must contain, refer to Chapter V in the Open Meetings Act.

The township clerk is required to record in the book of records of the township the minutes of the proceedings of every meeting held in the township and enter in the book every order or direction and all bylaws, rules, and regulations made by the electors at any meeting. 60 ILCS 1/75-10. The town record is the only competent evidence of the acts of the voters at township meetings. Cincinnati, I. & W. Ry. Co. v. People ex rel. Moffett, 205 Ill. 538, 69 N.E. 40 (1903).

2. Giving Notice of Meetings

Another important role of the clerk is to give notice of meetings. The township clerk gives notice of the time and place of the annual town meeting by posting notices in three of the most public places in the township at least fifteen days prior to the meeting and, if there is an English language newspaper published in the township, by at least one publication in that newspaper before the meeting. The notice sets forth the agenda as approved by the township board. Additional agenda items may be added to the annual town meeting agenda by a group of fifteen or more registered voters in the township that submit such items to the township board for consideration by March 1. However, the agenda items must be relevant to the powers granted to the electors under the Township Code before they may be considered for placement on the annual town meeting agenda. In the clerk's absence, the supervisor, assessor, or collector may post the notice. 60 ILCS 1/30-10.

Notice of a special town meeting is given in the same manner and for the same length of time as for the annual town meeting. The notice sets the object of the meeting as contained in the statement filed with the township clerk. No business may be done at a special meeting except the business that is specified in the statement and notice. 60 ILCS 1/35-10.

The township clerk also usually provides notice of regular and special township board meetings. A township with a website maintained by a full-time staff must also post agendas for regular township board meetings on such website. Any regular meeting agenda posted on such a website must stay posted until the regular meeting has ended. For more information on township board meetings and notice procedures, see Chapter V.

3. Keeper of Records and Administration of Oaths

The township clerk is the official custodian of all records, books, and papers of the township, and must duly file all certificates or oaths and other papers required by law to be filed in the clerk's office. 60 ILCS 1/75-5. All official township actions must be recorded by the clerk. People ex rel. v. Finley, 97 Ill. App. 214 (1902). The clerk may administer oaths and take affidavits in all cases required by law to be administered or taken by township officers. 60 ILCS 1/75-5. The clerk may administer oaths for absent voters as required by the general election law. However, the clerk cannot administer oaths in cases other than those specified. Shreve v. Cicero, 129 Ill. 226, 21 N.E.815 (1889).

4. Deputy Clerks

The township clerk, when authorized by the township board, may appoint one deputy clerk. The deputy clerk has the power and duty to do the following:

1. Execute all documents required by law to be executed by the township clerk and affix the township clerk's seal to those documents when required by law. In signing a document, the deputy clerk shall sign the name of the clerk followed with the word "By" and the deputy clerk's own name and the words "Deputy Clerk."

2. Attend bid openings with respect to the sale, purchase, and lease of goods or services by the township or the road district.

3. Attend town meetings and township board meetings and take minutes of those meetings.

The deputy clerk may exercise the powers authorized only in the absence of the township clerk and only when (i) the clerk has directed the deputy clerk, in writing, to exercise that power or (ii) the township board

has determined by resolution that the township clerk is temporarily or permanently incapacitated to perform that function. 60 ILCS 1/75-45.

5. Certificates

Township clerks must issue certain certificates:

a. Certificate of Payments

Once bills are approved, the township clerk must certify the amount of the bills approved stating the amount and to whom it is allowed, the account, and the date the account was audited. The certificate must be countersigned by the supervisor before payment of the amount. 60 ILCS 1/80-50.

b. Certificates of Votes to Raise Money

Each year, the township clerk must deliver to the supervisor, before the annual meeting of the county board, certified copies of all entries of votes for raising money made since the last annual meeting of the county board. 60 ILCS 1/75-15.

c. Amount of Tax Required to be Certified to County Clerk

The township clerk must annually certify to the county clerk the amount of taxes required to be raised for all township purposes. 60 ILCS 1/75-20. The authority of the county clerk to extend the township tax is the township clerk's certificate, without which any attempt to extend tax is illegal and void. People ex rel. Schnipper v. Missouri Pac. R. Co., 332 Ill. 53, 163 N.E. 348 (1928). If a township clerk willfully omits to make a return required, he or she is guilty of a petty offense and shall be fined, for each offense, not more than $10. 60 ILCS 1/75-25.

6. Resignations

Whenever the township board accepts a resignation, the township clerk makes a minute of the acceptance upon the township records. A resignation of a multi-township assessor, however, must be made to and may be accepted by the multi-township board, and the clerk of the multi-township board must make the minute upon the records of the multi-township board and forward a copy of the resignation and minute to the county clerk, the Department of Revenue, each of the township boards in the multi-township jurisdiction, and the supervisor of assessments for

entry upon their permanent records. Resignations become effective upon acceptance by the township or the multi-township board as the case may be. 60 ILCS 1/60-20.

7. Appointment Notices

When a township officer is appointed, the appointing officers must notify the township clerk. The township clerk gives a notice of appointment to each person appointed to office. The township clerk should also notify the county clerk of such appointment. 60 ILCS 1/60-15.

8. Member of the Township Board of Health

In townships in counties having a population of 500,000 or more, the township clerk is a member of the board of health for a public health district as provided in the Public Health District Act. 60 ILCS 1/75-35. The other board of health members are the township supervisor and assessor. 55 ILCS 5/5-20001.

Where a public health district, in counties under township organization, consists of a single township, the supervisor, assessor and township clerk shall be the board of health for the public health district. Where a public health district consists of two or more adjacent townships, the supervisors of the townships, together with the chairman of the county board, is the board of health for the public health district, provided that where the public health district consists of two townships and the supervisor of one of such townships is the chairman of the county board, the presiding officer of the county board with the advice and consent of the county board must appoint a qualified voter from one of such townships to serve as a member of the board of health for a term of one year. A majority of the board constitutes a quorum for the transaction of business. 70 ILCS 905/11.

D. The Township Assessor

The Office of Township Assessor is one of the most important and least understood of all township offices. The Assessor does not assess taxes or property. The Assessor does appraise property and place value on it, according to formulas set by the Illinois Department of Revenue. It is from taxes levied according to these property values as appraised by the township assessor that all units of local government, including townships, receive their income. Improper assessments (appraisals) made by untrained assessors result in loss of revenue to taxing bodies and unfair

treatment to the taxpayer. For assessing purposes, state statute mandates that any township with less than 1,000 inhabitants be part of a multi-township assessing district, in some cases requiring that sparsely inhabited townships be combined with more populous ones.

1. Bond

Township and multi-township assessors are not required to give a bond upon entering office. 35 ILCS 200/4-25.

2. Oath

Before entering office, township or multi-township assessors and their deputies take an oath that is filed with their respective township clerks. The form of the oath is found in the Illinois Compiled Statutes at 35 ILCS 200/4-30.

3. Meetings and Annual Assembly

To ensure uniformity of assessment practices in their townships, assessors are required to attend meetings called by the Department of Revenue and those called by supervisors of assessments ("SOA's"), now Chief County Assessment Officers. SOA's are required to assemble and instruct the assessors and deputies annually by January 1. During this public assembly, the SOA's are to instruct the assessors and deputies on how to conduct their duties. The instructions are to be in writing and made available to the public as well. Notice of the annual assembly itself is to be published not more than 30 nor less than 10 days before the assembly in a newspaper published in the township or tax assessment district. In addition, at the time of publication, a press release giving notice of the assembly shall be given to each newspaper published in the county and to each commercial broadcasting station whose main office is located in the county. 35 ILCS 200/9-15.

Failure to follow the instructions of the SOA constitutes a Class B misdemeanor. If the SOA purposely gives directions that are not in accordance with the law, then the SOA is guilty of a Class B misdemeanor. 35 ILCS 200/9-15.

4. Township Board of Health Member

While the assessor is a member of the *township board of health* (*see* 70 ILCS 905/11), the assessor is not a member of the *township board*.

5. Making Duplicate Copies

The SOA is entitled to make copies of all records compiled and maintained by the township assessor and multi-township assessor. 35 ILCS 200/9-25.

6. Property Record Cards

The SOA shall also make and maintain a complete set of all property record cards with the help of the township or multi-township assessor who shall supply the supervisor with a copy of all new property record cards as they are added to the tax rolls. 35 ILCS 200/9-25. In all counties, all property record cards maintained by a township assessor, multi-township assessor, or chief county assessment officer shall be public records and shall be available for public inspection during business hours, subject to reasonable rules and regulations of the custodian of the records. Upon request and payment of such reasonable fee established by the custodian, a copy or printout shall be provided to any person. Property record cards may be established and maintained on electronic equipment or microfiche, and that system may be the exclusive record of property information. 35 ILCS 200/9-20.

7. Diminution of Assessed Value

When a property in a county with less than 3,000,000 inhabitants has been destroyed or rendered uninhabitable or otherwise unfit for occupancy or customary use by natural disaster or accidental means, if requested, the township assessor shall send to the owner by certified mail an application form for reduction of the assessed valuation of that property as provided in Section 9-180. 35 ILCS 200/9-190.

8. Return of Assessment Books by Township Assessors

The assessor's obligation regarding the return of assessment books depends in part on the size of the township for which the assessor works. In counties with less than 600,000 inhabitants, based on the last census, the assessors shall, on or before June 15 for the assessment year, return the assessment books or workbooks to the supervisor. Assessors in counties with more than 600,000 but fewer than 700,000 inhabitants must return the assessment books to the supervisor on or before July 15 of the

assessment year.[2] Assessors in counties with more than 700,000 but fewer than 3,000,000 inhabitants, shall, on or before November 15 of the assessment year, return the assessment books or workbooks to the supervisor. If an assessor in a county with less than 3,000,000 inhabitants, but more than 600,000 inhabitants, does not return the assessment books or workbooks within the required time, the SOA may take possession of the books and complete the assessments. The assessor shall then verify each book by affidavit as follows:

> State of Illinois)
>) ss.
> County of ______)
>
> I do solemnly swear that the book or books ______ in number, as the case may be, to which this affidavit is attached, contains a full and complete list of all of the real property in the township or multi-township or assessment district herein described subject to taxation for the year _______ so far as I have been able to ascertain, and that the assessed value set down in the proper column opposite the descriptions of property is a just and equal assessment of the property according to law.
>
> Dated __________

The township must assure that the assessments are completed. If the SOA determines that the assessor has not completed the assessments as required by law, the county board may submit a bill to the township board for the reasonable costs incurred by the supervisor in completing the assessments. 35 ILCS 200/9-230. If the board of review in any county under township organization with less than 3,000,000 inhabitants fails to complete its work for the assessment year by the next January 1, the SOA must issue work books to the township assessors until the board of review completes its work. 35 ILCS 200/9-235.

9. Vacancies

When any township or multi-township assessment district fails to elect an assessor when an assessor's office becomes vacant for any reason

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[2] Return date for counties of 600,000 to 700,000 inhabitants has changed from Oct. 15 to July 15 of the assessment year. See Public 97-797, effective Jan. 1, 2013

specified in Section 25-2 of the Election Code, the township or multi-township board shall fill the vacancy by appointing a person qualified as required under Section 2-45 or as revised by the Department under Section 2-52. A person appointed to fill a vacancy must be a member of the same political party as the person vacating the office. The appointee's political party affiliation is established by the appointee's record of voting in party primary elections or by holding or having held an office in a political party organization before the appointment. In the event that the appointee has never voted in a party primary election or held an office in a political party organization before appointment, political party affiliation may be determined by participation in a township caucus.

In the alternative, an assessment district shall contract with a person qualified as required under Section 2-45, or as revised by the Department under Section 2-52, to do the assessing at a cost no greater than the maximum salary authorized for that assessment district under Section 2-70. 35 ILCS 200/2-60.

10. Compensation

Where an assessor works for a multi-township board, the multi-township board of trustees shall set the salary of its assessor at least 150 days before the assessor's election. 35 ILCS 200/2-70 and 60 ILCS 1/65-20. However, the date for setting the compensation of single township assessor compensation is 180 days before the beginning of the term of office of the other officers as stated in 50 ILCS 145/2. In contrast, any assessor in counties with fewer than 3,000,000 inhabitants but more than 50,000 inhabitants may petition the Department each year to receive additional compensation based on performance according to a two-part statutory formula. 35 ILCS 200/4-20. To receive additional compensation, the official's assessment jurisdiction must meet the following criteria:

1. the median level of assessment must be no more than 35-1/3% and no less than 31-1/3% of fair cash value of property in his or her assessment jurisdiction; and

2. the coefficient of dispersion must not be greater than 15%.

11. Additional Compensation – Certificates and Requirements

Township assessment employees may gain additional compensation by earning a Certified Illinois Assessing Officers Certificate. Subject to the requirements for continued training, any supervisor of assessments, assessor, deputy assessor, or member of a board of review in any county

who has earned a Certified Illinois Assessing Officers Certificate from the Illinois Property Assessment Institute shall receive from the State, out of funds appropriated to the Department, additional compensation of $500 per year. To receive a Certified Illinois Assessing Officer Certificate, one must complete successfully and pass examinations on a basic course in assessment practice that is approved by the Department and conducted by the Institute, as well as complete additional courses totaling not less than 60 class hours on the cost, market, and income approaches to value, mass appraisal techniques, and property tax administration. These must also be approved by the Department.

Any assessor, deputy assessor, or member of a board of review who has been awarded a Certified Assessment Evaluator Certificate by the International Association of Assessing Officers shall receive an additional compensation of $500 per year from funds appropriated to the Department.

Any assessor, deputy assessor, or member of a board of review who has been awarded a Residential Evaluation Specialist, Assessment Administration Specialist, or Cadastral Mapping Specialist Certificate by the International Association of Assessing Officers but who has not been awarded a Certified Assessment Evaluator certificate shall receive additional compensation of $250 per year from funds appropriated to the Department. If any assessor, deputy assessor, or member of a board of review has been awarded more than one certificate but has not been awarded a Certified Assessment Evaluator Certificate the maximum additional compensation shall be $250.

To continue to be eligible for the additional compensation, a Certified Illinois Assessing Officer must complete successfully a minimum of 15 class hours requiring a written examination and the equivalent of one seminar course of 15 class hours that does not require a written examination in each year for which additional compensation is sought after receipt of the certificate. The Department shall designate and approve courses acceptable for additional training and class hours applicable to each course. The Department shall specify procedures for certifying the completion of such additional training. The courses and training shall be conducted annually at various convenient locations throughout the State. At least one course shall be conducted annually in each county with more than 400,000 inhabitants. 35 ILCS 200/4-10.

12. Term of Office/Qualifications

Assessors shall enter upon their duties on January 1, following their election, and perform the duties of the office for four years. No person is eligible to file nomination papers or participate as a candidate in any caucus or primary or general election for, or be appointed to fill vacancies in, the office of assessor, unless that person has successfully completed an introductory course in assessment practices that is approved by the Department, or possesses at least one of the following six qualifications:

1. a Certified Illinois Assessing Officer Certificate from the Illinois Property Assessment Institute with current additional 30 class hours as required for additional compensation under Section 4-10;

2. a Certified Illinois Assessing Officer Certificate from the Illinois Property Assessment Institute with a minimum of 300 additional hours of successfully completed courses approved by the Department, if at least 150 of the course hours required a written examination and within the four years preceding the election, successful completion of at least 15 class hours of additional training in courses that must be approved by the Department, including but not limited to assessment, appraisal, or computer courses, and that may be offered by accredited universities, colleges, or community colleges;

3. a Certified Assessment Evaluator designation from the International Association of Assessing Officers;

4. certification as a Member of the Appraisal Institute, Senior Real Estate Analyst, or Senior Real Property Appraiser from the Appraisal Institute or its predecessor organization;

5. a professional designation by any other appraisal or assessing association approved by the Department; or

6. if the person has 12 years or more as a township or multi-township assessor, a Certified Illinois Assessing Official Certificate from the Illinois Property Assessment Institute with at least 360 additional hours of successfully completed (and approved by the Department) coursework, 180 of which must have required a written examination. 35 ILCS 200/2-45.

The candidate cannot file nominating papers or participate as a candidate unless a copy of the certificate of the candidate's qualifications is filed with the township clerk, board of election commissioners, or other appropriate authority as required by the Election Code. Candidates cannot be appointed to fill vacancies until the candidates have filed copies of the certificates of their qualifications with the appointing authorities. 35 ILCS 200/2-45.

In an assessment district with $25,000,000 or more of non-farm equalized assessed value or $1,000,000 or more in commercial and industrial equalized assessed value, no person is eligible to file nomination papers or participate as a candidate in any caucus or primary or general election for, or be appointed to fill vacancies in, the office of township or multi-township assessor unless the candidate possesses at least one of the six qualifications listed above. The candidate cannot file nominating papers or participate as a candidate unless a copy of the certificate of his or her qualifications is filed with township clerk, board of election commissioners, or other appropriate authority as required by the Election Code. 35 ILCS 200/2-45.

In a township or multi-township assessment district with more than $10,000,000 and less than $25,000,000 of non-farm equalized assessed value and less than $1,000,000 in commercial and industrial equalized assessed value, no person who has previously been elected as assessor in any such township or multi-township assessment district is eligible to file nomination papers or participate as a candidate in any caucus or primary or general election for the office of assessor unless the candidate possesses at least one of the six qualifications listed above. The candidate cannot file nominating papers or participate as a candidate unless a copy of the certificate of his or her qualifications is filed with the township clerk, the board of election commissioners, or other appropriate authority as required by the Election Code. 35 ILCS 200/2-45.

If any person files nominating papers for candidacy for the office of assessor without also filing a copy of the certificate as required above, the clerk of the township, the board of election commissioners, or other appropriate authority as required by the Election Code shall refuse to certify the name of the person as a candidate for election to the proper election officials. If no candidate for election meets the above qualifications, there shall be no election. The township board of trustees or multi-township board of trustees shall then appoint or contract with a person under Section 2-60. 35 ILCS 200/2-45.

13. Certification by Department

By February 1 of each year before the year of election of assessors, the Department shall certify to each township or multi-township clerk and each county clerk a list showing all township and multi-township assessment districts with the pre-election requirements for township or multi-township assessor under Section 2-45 for each township and each multi-township assessment district. If a new multi-township assessment district is established under Section 2-15 or a township is disconnected from a multi-township assessment district under Section 2-35, the Department shall, within 30 days after the required statutory notice, certify to the multi-township clerk and county clerk whether the assessor for the new multi-township assessment district is subject to the requirements of subsections (b), (c), or (d) of Section 2-45 of the Township Code. 35 ILCS 200/2-50.

14. Revision of Assessor Qualifications by Department

The Department may revise the assessor qualifications for assessment districts from those qualifications specified in subsections (c) or (d) of Section 2-45 to those qualifications specified in subsection (b) of Section 2-45 if the township or multi-township board of trustees petitions the Department to do so. In determining petitions from a board of trustees requesting a change in assessor qualifications, the Department shall consider the quantity and complexity of assessments in the township or multi-township. The Township Code requires that the Department promulgate reasonable rules relating to the administration of this Section. 35 ILCS 200/2-52.

15. Employees

Assessors may appoint one or more employees to assist in assessing or for duties otherwise required for the operation of the assessor's office. 35 ILCS 200/2-65(a). Such employees may be employed on an annual, monthly, or daily basis. The town board has no power to approve or disapprove the township assessor's personnel. 35 ILCS 200/2-20. If the assessor for any reason employs five or more deputies or other employees, then that assessor must adopt rules concerning all benefits available to employees. The rules shall include, without limitation, the following benefits to the extent they are applicable: insurance coverage, compensation, overtime pay, compensatory time off, holidays, vacations, sick leave, and maternity leave. The rules should comply with the provision of the Affordable Care Act, also known as "Obamacare." The

rules shall be adopted and filed with the township clerk within four months after the assessor takes office. A multi-township assessor shall file the rules with the clerk of each township in the district. Amendments to the rules shall be filed with the appropriate township clerk or clerks by their effective date. 35 ILCS 200/2-65.

16. Deputies – Inability to Perform Duties

If the township assessor or multi-township assessor is unable to perform the duties of the office without help, he or she may appoint deputies and clerks. 35 ILCS 200/2-65.

17. Assessor's Budget

The assessor is required to prepare and present a budget for the assessor's office to the township board at least 60 days prior to the beginning of each fiscal year. 35 ILCS 200/2-30. The township board must determine the amount required and permitted by law to finance the operations of the assessor's office. 35 ILCS 200/2-30. If a dispute arises between the township and the assessor regarding the budgetary requirements of the assessor's office, a court could potentially require the township board to provide the assessor with a sufficient amount of compensation to perform the assessor's statutory functions.

18. Expenses, Education and Office Space

The township board sets the amount an assessor is allowed for travel and office expense. 35 ILCS 200/2-80. Assessors shall receive travel and transportation expenses in the amount determined by the township board and shall be reimbursed their reasonable travel, meal, lodging, and registration expenses incurred in attendance at a school of instruction prescribed by the Department. The township board shall provide the office and storage space, equipment, office supplies, deputies and clerical and stenographic personnel, and other items as are necessary for the efficient operation of the office. 35 ILCS 200/2-80.

19. Penalties For Fraudulent Activity

Any person who, with intent to defeat or evade the law in relation to the assessment of property, delivers or discloses to any assessor or deputy assessor a false or fraudulent list, return, or schedule of his or her property not exempted by law from taxation is guilty of a Class A misdemeanor. 35 ILCS 200/25-40.

20. Failure to Answer Questions

If the board of review or board of appeals should call for the assessor to appear before it and the assessor either fails to appear or appears and refuses to submit to the inquiry or answer questions, the assessor shall be guilty of a petty offense. 35 ILCS 200/16-10.

E. The Township Collector

1. Duties

The Office of Township Collector is unique to three Illinois counties: Madison, Will, and Peoria. The primary duty of the Collector is the collection of property taxes. The Collector's powers and duties are derived from the Illinois Property Tax Code, 35 ILCS 200/1-3, *et seq*., which requires the Collector to mail or e-mail tax bills and to keep an accounting of all monies received. 60 ILCS 1/78-5; 35 ILCS 200/20-5. Every 30 days the Collector must submit a detailed statement of the monies received and pay the County Collector all of the taxes collected, except for those paid under protest. 35 ILCS 200/20-50. Within 60 days of receiving the tax books, the Collector must make final settlement and return the tax books as well as pay all monies collected along with a detailed statement, in writing, of the amount of taxes paid under protest and the amount of taxes he or she has been unable to collect on property. 35 ILCS 200/20-55; 35 ILCS 200/20-60. If the Office of Township Collector should ever become vacant and is not filled before May 1st, the County Collector shall assume the powers and duties of the Township Collector. 35 ILCS 200/20-85. For additional details on the duties of your Township Collector, please contact your township attorney or the County Treasurer's Office.

2. Salary

The township board of trustees sets a yearly salary for the township tax collector at least 180 days before the collector's term begins. The collector's salary shall be set at the same time as the supervisor's salary is set. 60 ILCS 1/65-20.

3. Bond and Oath

Each township collector, before entering upon the duties of office, shall execute a bond, with surety or sureties to be approved by the supervisor and township clerk. 60 ILCS 1/55-25. Failure to give the security and take the oath of office is deemed a refusal to serve. 60 ILCS 1/55-25. The bond shall be given for a sum equal to 160% of the largest

amount of taxes collected by that officer or predecessor in office in any one year during the preceding five years if individuals act as sureties or equal to 110% of such largest amount if the security is given by a surety company authorized to do business in this state, estimated by the supervisor and township clerk, that will be in his or her custody or control at any one time. Signatures to such bond, signed with a mark, shall be witnessed, but in no other case shall witness be required. The form of the bond and oath is set out statutorily at 35 ILCS 200/19-5.

Where a township collector receives an official bond from the county clerk with the proper amount named in it for him to execute and obtain securities on, it is sufficient notice of the amount of taxes to be collected by him, and it is his duty to have the bond executed and presented to the proper authority for approval within eight days thereafter. Ross v. People, 78 Ill. 375 (1875).

4. Recording of Bond and Oath of Township Collector

Within six business days after approval of the township collector's bond, the township supervisor shall file the bond in the office of the county recorder, who shall record the bond, including the oath, in a book for that purpose. When recorded, the oath and bond shall be filed by the county recorder in the office of the county clerk. A bond, when so filed for record, shall be a lien against the property of the township collector until he or she has complied with the conditions thereof. 35 ILCS 200/19-10.

5. Deputy Collector

Collectors may appoint deputies by an instrument in writing, duly signed, and may also revoke any such appointment at their pleasure and may require bonds or other securities from the deputies to secure themselves. Each deputy shall have the same authority as the collector to collect the taxes levied or assessed within the portion of the taxing district assigned to him or her. Each collector shall be responsible to the taxing districts and taxpayers for all monies collected and for all actions by any deputy while acting as a deputy and for any omission of duty. Any bond or security taken from a deputy by a collector shall be available to the collector, his or her representatives, and securities to indemnify them for any loss or damage arising from any act of the deputy. 35 ILCS 200/19-75.

6. Vacancies

If the office becomes vacant for any reason, the township board shall appoint a new collector for the remainder of the year. The new collector is subject to all the requirements of the original collector regarding the bond and oath, but the former collector's bond is retained and the person resigning shall not be reappointed to complete the collections in any township in the county. 35 ILCS 200/19-20.

7. Intermediate Settlements by Township Collectors

When required to do so by the governmental entity for which a tax is collected, township collectors shall provide a statement of both the taxes collected for the entity and the amount paid under protest. This statement, when required, is to be provided every 30 days. The collectors shall pay over to the authorities the amount of all taxes shown to be collected other than those paid under protest. The payments shall be made as directed in the warrant attached to the collectors' books. Additionally, township collectors shall render a similar account of county taxes to the county collector and pay over the amount collected. Each township collector shall make final settlements for all taxes charged in the tax books at or before the time fixed in Section 20-55. In making the settlements, the collectors shall be entitled to credit for the amount uncollected on the tax books as determined by the settlement with the county collector. The officer to whom any monies are paid under this Section shall deliver to the collector duplicate receipts for those payments. 35 ILCS 200/20-50.

8. Final Settlement by Township Collectors

Township collectors shall return the tax books and make final settlement for the amount of taxes placed in their hands for collection within 60 days after receiving the tax books. As an option, the county collector may instead notify the several township collectors in writing upon what day they shall appear at the county collector's office to make final settlement. If this option is exercised, the township collectors must appear at the county collector's office within 20 days after the expiration of the 60-day limit.

Township collectors in townships organized under the provisions of Article 15 of the Township Code shall make a partial settlement with the county collector of all taxes collected at the expiration of 60 days from the day the tax books are received by the township collectors. However, the township collectors shall retain the tax books until on or before the first

day of September. At that point, the township collectors shall make final settlement for the amount of taxes placed in their hands for collection together with the amount of interest and penalties that may have accrued. The township collector shall collect the interest and penalties and return the tax books to the county collector.

In the 10 years following the completion of a general reassessment of property made under an order of the Department in any county with 3,000,000 or more inhabitants, another rule applies. Under this rule, the return and settlement shall be made on or before the twenty-first day after the day specified by the county clerk for the delivery of the books for the collection of taxes to the collectors. Again, though, the county collector may first notify in writing the several township collectors upon what day within 20 days after the 21-day period they shall appear at the county assessor's office to make final settlement. 35 ILCS 200/20-55.

9. Satisfaction

Upon the final settlement discussed above, the township collector can request from the county collector a satisfaction piece in writing. The satisfaction piece may be recorded in the recorder's office. Once recorded, the satisfaction piece discharges the securities and the lien upon the property of the collector. However, all suits commenced upon the bond within three years after the recording of the satisfaction piece are not discharged yet. 35 ILCS 200/20-75. If the township collector fails to make final settlement, the county collector can recover against the township collector's bond. 35 ILCS 200/20-80.

10. Statements of Tax Collections to be Furnished County Collector

At the time of making return to the county collector, township collectors are required to provide a written statement. As in the tax books delivered to the township collector by the county clerk, these statements shall show the property index number (PIN). Where a PIN is not provided, then the township collector will provide the number of the page of the tax book and the number of the line of the page to identify the item that appears to be delinquent.

This statement details the amount of taxes paid under protest as well as the amount of taxes uncollected on property. The statutes provide that when no taxes have been paid on any one page on the collector's book, the page footings of the taxes on that page may be copied into the statement.

The statement in that case does not require a description of the delinquent property or the names of the owners. The township collector shall add up the delinquent taxes in the statement and make a summary of the statement. This statement must identify the aggregate amount of tax and the total delinquent just as in the township collector's warrant. The township collector must also provide an oath that this statement is true and correct. Finally, at the time of making the final settlement, the township collectors shall pay over to the county collector all taxes paid to them under protest. 35 ILCS 200/20-60.

11. Tax Collector May Use Machine Accounting

The statutes make it clear that the several terms used in reference to a collector's tax book (i.e., "tax book," "warrant book," "collector's book," "book," or "list") includes all mechanically, electronically, or otherwise produced record-making material. 35 ILCS 200/1-25.

12. Form of Return as to Any Uncollected Taxes

Uncollected taxes, not surprisingly, receive some special attention when returning the tax books to the county collector. In such cases, the township collector is to provide an affidavit that the taxes charged against that property remain due and unpaid. This affidavit must be provided in each case where the tax book does not properly indicate the taxes as having been paid to the collector. 35 ILCS 200/20-65. Upon the filing of the tax book, the county collector shall allow the township collector credit for the amount of unpaid taxes. That amount is then credited to the funds for which the tax was charged. 35 ILCS 200/20-70.

F. The Highway Commissioner

In each road district, except in a county unit road district and except in municipalities that have created a road district, a highway commissioner must be elected. The highway commissioner of each road district comprised of a single township is an officer of that township. 605 ILCS 5/6-112.

The township highway commissioner or the road district commissioner has all the road district roads under his or her jurisdiction except those inside incorporated cities and villages. He or she is responsible for their construction and maintenance to the extent that the electors provide him or her with the funds for such. The commissioner can only do that which the statutes say he or she can do, and he or she has no

authority beyond that point. In no case has he or she the legal right to spend more money than the trustees appropriate for road purposes.

Township and road district commissioners have sole jurisdiction over the roads and bridges of the district and are not subject to direction of the township board, with certain exceptions.

For a detailed discussion of the office of Highway Commissioner and the Road District generally, please refer to Chapter XXIII on Road Districts.

G. Other Township Officers

1. Township Enforcement Officer

The township board may appoint one or more township enforcement officers to serve for a term of one year and may remove an officer with or without cause. The sheriff of the county in which the township is situated may disapprove of any such appointment within 30 days after the notice is filed. The disapproval precludes that person from serving as a township enforcement officer, and the township board may appoint another person to that position subject to approval by the sheriff.

Every person appointed to the office of township enforcement officer, before entering on the duties of the office and within 10 days after being notified of the appointment, must cause to be filed in the office of the township clerk a notice signifying his or her acceptance of the office. Neglect to cause the notice to be filed is deemed a refusal to serve. Enforcement officers are also required to execute, with sufficient sureties to be approved by the supervisor or clerk of the township, an instrument in writing by which the township enforcement officer and his or her sureties jointly and severally agree to pay to each and every person who may be entitled thereto all sums of money as the township enforcement officer may become liable to pay on account of any neglect or default of the township enforcement officer or on account of any misfeasance of the township enforcement officer in the discharge of, or failure to faithfully perform, any of the duties of the office.

The township enforcement officers have the same power and authority within the township as a deputy sheriff but only for the purpose of enforcing township ordinances. Township enforcement officers are authorized to enforce county ordinances within areas of a county located within the township pursuant to intergovernmental agreements between the respective county and township to the extent authorized by agreement.

The township enforcement officer cannot carry firearms and, as such, is not required to comply with the Peace Officer and Probation Officer Firearm Training Act. The officer must, however, attend law enforcement training classes conducted by the Local Government Law Enforcement Officers' Training Board. The township board must appropriate all necessary monies for the training.

In all actions for the violation of any township ordinance, the township enforcement officers are authorized to issue and to serve upon any person who the township enforcement officer has reasonable grounds to believe is guilty of a violation of a township ordinance a notice of violation that constitutes a summons and complaint. In all actions for violation of any township ordinance when the fine would not be in excess of $500, however, and no jail term could be imposed, service of summons may be made by the township clerk by certified mail, return receipt requested, whether service is to be within or without the State. A copy of such notice of violation must be forwarded to the circuit court having jurisdiction over the township where the violation is alleged to have been committed. Every person who has been issued a summons must appear for trial, and the action must be prosecuted in the corporate name of the township. Enforcement of county ordinances shall be in accordance with procedures adopted by the county and any applicable State law.

The township enforcement officers must carry identification documents provided by the township board identifying him or her as the township enforcement officer. The officers must notify the township clerk of any violations of township ordinances.

A county auxiliary deputy or deputy sheriff or a municipal policeman or auxiliary policeman is not precluded from serving as a township enforcement officer during off-duty hours.

The township board may provide compensation for the township enforcement officer on either a per diem or a salary basis. 60 ILCS 1/100-10.

2. Pound Master

Every person appointed to the office of pound master, before he or she enters on the duties of the office and within 10 days after being notified of his or her election or appointment, must cause to be filed in the office of the township clerk a notice signifying his or her acceptance of

the office. Neglect to cause the notice to be filed is deemed a refusal to serve. 60 ILCS 1/55-20.

H. Eligibility for Office

No person is eligible to hold any office unless he or she is a legal voter and has been a resident of the township for one year. 60 ILCS 1/55-5. No unnaturalized citizen or minor is eligible. Markiewicz v. People ex rel. Delaney, 126 Ill. App. 203, 80 N.E. 256 (1907). "Legal voter" means a legal voter of the township, whether or not he was a qualified elector. The durational residency statute requires that a candidate be a resident of the township for a year before filing nomination petitions. Schumann v. Fleming, 261 Ill. App. 3d 1062, 634 N.E.2d 336 (2d Dist. 1994). A candidate filing his or her statement of candidacy is required to swear that he or she is presently qualified to hold office, not that he or she would be qualified to hold office in the future.

A person is not eligible to hold any office if that person, at the time required for taking the oath of office, has been convicted in any court located in the United states of any infamous crime, bribery, perjury, or other felony 60 ILCS 1/55-6.

I. Simultaneous Tenure of Office

No township supervisor or trustee may accept or hold any office by the appointment of the township board unless he or she first resigns from the office of supervisor or trustee or unless the appointment is specifically authorized by law. This restriction does not prohibit, however, a supervisor or trustee from serving as a volunteer firefighter and receiving compensation therefore, nor will it prohibit a supervisor or trustee from holding an elective office in another unit of local government so long as no contractual relationship between the township and that other unit of government exists. 50 ILCS 105/2a.

Additionally, a member of the county board in a county having fewer than 550,000 inhabitants, during the term of office for which he is elected, may also hold the office of township highway commissioner. 50 ILCS 105/1.1. Furthermore, it is lawful for any person to simultaneously hold the office of county board member and township supervisor, and in counties of less than 100,000 in population, the office of county board member and township trustee. Finally, in counties with less than 300,000 in population, it is lawful for a person to hold the office of county board

member at the same time as he or she holds the office of township assessor or town clerk. 50 ILCS 110/2.

J. Oaths of Office

Every person elected or appointed to the office of supervisor, township clerk, assessor, trustee, commissioner of highways, township enforcement officer, or collector, before entering upon the duties of that office, shall take and subscribe, before any person authorized to administer an oath of office, the oath or affirmation of office prescribed by the Constitution. 60 ILCS 1/55-10; 35 ILCS 200/4-30. The township clerk cannot administer oaths in cases other than those specified. Shreve v. Cicero, 129 Ill. 226, 21 N.E. 815 (1889). Within eight days after the oath or affirmation is taken and subscribed, it shall be filed in the office of the township clerk or the clerk of the multi-township board, as the case may be, and the county clerk. 60 ILCS 1/55-10. Although a town officer is required to take an oath, the officer need not do this until a contested election is settled. Farwell v. Adams, 112 Ill. 57, 1 N.E. 272 (1884). If the officer does it then, the officer is not deemed to have refused to serve and to have forfeited his or her rights to the office received by his/her opponent. If any township officer who is required by law to take the oath of office enters upon the duties of his or her office before taking the oath, he or she must pay the township a $50 fee. 60 ILCS 1/55-35. The oath is as follows:

> I do solemnly swear (affirm) that I will support the Constitution of the United States, and the Constitution of the State of Illinois, and that I will faithfully discharge the duties of the office of ________ to the best of my ability.

60 ILCS 1/55-10; 35 ILCS 200/4-30.

If any person elected or appointed to the office of supervisor, township clerk, assessor, trustee, commissioner of highways, township enforcement officer, or collector neglects to take and subscribe the oath or affirmation and cause the certificate to be filed, the neglect is deemed a refusal to serve. 60 ILCS 1/55-15. Furthermore, if any person elected to the office of supervisor, township clerk, assessor, or commissioner of highways refuses to serve, he or she must pay a $25 fine to the township. 60 ILCS 1/55-30. The purpose of the penalty is to enforce the acceptance of the office. Nagel v. Wakey, 161 Ill. 387, 43 N.E. 1079 (1896).

Moreover, the statute does not relieve a person who has been appointed from the duty of serving upon payment of the penalty.

Every person elected or appointed to the office of highway commissioner and to consolidated township road district clerk in counties under township organization and to district clerk in counties not under township organization, before he enters upon the duties of his office, and within 10 days after he is notified of his election or appointment, shall take and subscribe, before some judicial officer of the circuit court or district or town clerk, the oath or affirmation of office prescribed by the Constitution, which oath or affirmation shall, within 5 days thereafter, be filed with the district or township clerk. In counties under township organization, no additional oath shall be required of the township clerk to enable him to enter upon the discharge of the duties of his office as ex-officio clerk for the highway commissioner. If any person elected or appointed to either of the offices above named neglects to take and subscribe such oath and cause the same to be filed as above required, such neglect shall be deemed a refusal to serve. 605 ILCS 5/6-118.

K. Terms of Office – Time for Taking Office

All terms of office for township officials are for four years and until a successor is elected and qualified. 60 ILCS 1/50-5. Township supervisors and clerks enter upon their duties on the third Monday of May following their elections. 60 ILCS 1/50-15. Township trustees are also elected to four-year terms beginning the third Monday of May following their election and serve until their successors are elected and qualified. 60 ILCS 1/50-40. Highway commissioners enter upon the duties of office on the third Monday in May after their election. 605 ILCS 5/6-116.

Unlike other township officials, township and multi-township assessors begin their duties on January 1 next following their election. Cannizzo v. Berwyn Twp., 318 Ill.App.3d 478, 741 N.E.2d 1067, 251 Ill. Dec. 889, (1st Dist. 2001). Township collectors elected at the township election shall enter upon their duties on January 1 next following their election and qualification. 60 ILCS 1/50-15.

The Illinois Supreme Court has held that legislatively reducing the length of an elected official's term and removing him or her from office prior to the expiration of a term of office may be a violation of the electorate's voting rights. Tully v. Edgar, 171 Ill.2d 297, 664 N.E.2d 43 (1996). The issue in Tully was whether the state legislature acted within constitutional limits in enacting legislation that changed the status of

University of Illinois trustees from elected to appointed public servants. The legislation effectively removed the elected trustees prior to the completion of their terms. Ultimately, the court found that absent any compelling reason, a legislative body cannot shorten an elected official's tenure midterm because doing so will frustrate voter expectations and thus hamper the overall electoral process. The Tully analysis has not been extended to provide an elected official complete protection from the diminution of his duties. However, when a governmental authority has discretion to modify the duties of an elected official, the official cannot claim to be constructively removed when their responsibilities are modified. Haney v. Winnebago Cty. Bd., 2020 IL App (2d) 190845, at ¶ ¶ 32–33.

The Tully court's analysis requires due process and adequate hearing procedures for aggrieved elected officials. As illustrated in Brown v. Perkins, 706 F.Supp. 633 (N.D. Ill. 1989), the court held that a referendum to reduce the term of a trustee automatically provided him with a pre-termination notice and hearing requirements. These cases imply that, absent a removal or term shortening by referendum, an elected official can only be removed from office before the end of a term after notice and due process.

L. Delivery of Records to Successor

Whenever the term of any supervisor, township clerk, or commissioner of highways expires and another person is elected or appointed to that office, the successor, immediately after he or she enters upon the duties of the office, shall demand of his or her predecessor all the books and papers belonging to the office and under the predecessor's control. 60 ILCS 1/55-40. Likewise, whenever any officer resigns or the office becomes vacant in any way and another person is elected or appointed in the officer's stead, the person so elected or appointed must demand all the books and papers of his predecessor or of any person having charge of those books and papers. 60 ILCS 1/55-40. Also, the duty of every person going out of office, whenever required by law, is to deliver up, on oath, all the records, books, and papers in his or her possession or in his or her control belonging to that office. 60 ILCS 1/55-55. The oath may be administered by the officer to whom the delivery is to be made. It is also the duty of every outgoing supervisor and commissioner of highways, at the same time, to pay over to his or her successor the balance of monies remaining in his or her hands as ascertained by the trustees of township accounts.

Upon the death of any officer, the successor of the officer shall demand all the books and papers of his predecessor on the executors or administrators of the deceased officer. The executors or administrators shall deliver up, on oath, all records, books, and papers in their possession or under their control belonging to the office and held by their testator or intestate. 60 ILCS 1/55-50.

M. Vacancies in Township Offices and the Manner in Filling Them

Except for the office of township or multi-township assessor, if a township fails to elect the number of township officers that the township is entitled to by law, or a person elected to any township office fails to qualify, or a vacancy in any township office occurs for any other reason, including without limitation the resignation of an officer or the conviction in any court of the State of Illinois or of the United States of an officer for an infamous crime, then the township board shall fill the vacancy by appointment, by warrant under their signatures and seals, and the person so appointed shall hold the respective office for the remainder of the unexpired term. 60 ILCS 1/60-5. All persons so appointed shall have the same powers, duties, and salaries as those of the vacating officers and are subject to the same penalties as if they had been elected or appointed for a full term of office. A vacancy in the office of township or multi-township assessor shall be filled only as provided in the Property Tax Code. A conviction for an offense that disqualifies an officer from holding that office occurs on the date of the (1) the entry of a plea of guilty in court, (2) the return of a guilty verdict, or (3) in the case of a trial by the court, the entry of a finding of guilt.

If a vacancy on the township board is not filled within 60 days, then a special town meeting of the electors must be called to select a replacement. 60 ILCS 1/35-35; 60 ILCS 1/60-5. If the vacancy being filled under subsection (a) or (b) is for the township supervisor, a trustee shall be appointed as deputy supervisor, a trustee shall be appointed as deputy supervisor to perform the ministerial functions of that office until the vacancy is filled under subsections (a) or (b). Once the vacancy is filled under subsections (a) or (b), the deputy supervisor's appointment is terminated. 60 ILCS 1/60-5. Whenever any township or multi-township office becomes vacant or temporarily vacant, the township or multi-township board may temporarily appoint a deputy to perform the ministerial functions of the vacant office until the vacancy has been filled as provided in subsection (a) or (b). If the office is temporarily vacant, the temporarily appointed deputy may perform ministerial functions of the vacant office until the township officer submits a written statement to the

appropriate board that he or she is able to resume his or her duties. 60 ILCS 1/60-5. The statement shall be sworn to before an officer authorized to administer oaths in Illinois. A temporary deputy cannot vote at any meeting on the township board on any matter properly before the board unless the appointed deputy is a trustee of the board at the time of the vote. If the appointed deputy is a trustee appointed as a temporary deputy, his or her trustee compensation shall be suspended until he or she concludes his or her appointment as an appointed deputy upon the permanent appointment to fill the vacancy. The compensation of a temporary deputy shall be determined by the appropriate board. The township board shall not appoint a deputy clerk if the township clerk has appointed a deputy clerk.

Except for the temporary appointment of a deputy under subsection (c), any person appointed to fill a vacancy must be a member of the same political party as the person vacating the office if the person vacating the office was elected as a member of an established political party that is still in existence at the time of the appointment. The appointee must establish his or her political party affiliation by his or her record of voting in party primary elections or by holding or having held an office in a political party organization before appointment. If the appointee has not voted in a party primary election or is not holding or has not held an office in a political party organization before the appointment, then the appointee shall establish his or her political party affiliation by his or her record of participating in a political party's nomination or election caucus. 60 ILCS 1/60-5.

N. Compensation

Township officers are entitled to compensation for each day necessarily devoted by them to the services of the township in the duties of their respective offices. 60 ILCS 1/65-5. The compensation to be paid to each officer in a new township established is determined by the township board, the whole or a part of which compromises the new township and that has the highest equalized assessed valuation of the old townships that comprise the new township.

Compensation set by a multi-township board for the multi-township assessor must be set at least 150 days before the election of that officer. 60 ILCS 1/65-5. Compensation set by a township board for the township assessor and collector must be set at the same time the compensation of its supervisor is set. Compensation shall be for time served, and no township officer may receive compensation for any future or anticipated days of

duty. Compensation of township officers is set by the township board at least 180 days before the beginning of the terms of office, including compensation of the road district treasurer, which cannot be less than $100 nor more than $1,000 per year. 60 ILCS 1/65-20. Compensation of a multi-township assessor is set at least 150 days before his or her election. 60 ILCS 1/65-20.

A portion not to exceed 50% of a highway commissioner's annual salary may be paid from the corporate road and bridge fund or the permanent road fund in districts comprised of a single township if approved by the township board and highway commissioner. 605 ILCS 5/6-207.

Statutory law allows increases but not decreases in the salaries of appointive officers during their term. 65 ILCS 5/3.1-50-5. It could be argued that such persons have a guaranteed minimum salary. However, both logic and case law seem to point to the conclusion that appointed officers with an indefinite term are still subject to upward or downward fluctuations in their salaries. Chi. Patrolman's Ass'n. v. Chi., 56 Ill.2d 503, 309 N.E.2d 3 (1974). Where a minimum salary statute exists, however, its terms must be followed.

A question that remains unanswered by the courts is whether health or other benefits given to elected officials are considered as part of compensation. However, the Attorney General has stated that the provision of health insurance benefits constitutes an increase in salary if the action to provide for the benefits is taken during the term of the officer who is to receive the benefits. Op. Att'y Gen. (Ill.) 94-022 (1994).

O. Removal from Office

Where a township board member has five or more consecutive unexcused absences, the township board may declare a vacancy in the office. 60 ILCS 1/80-10(c). While it is not mandatory to have prescribed rules in place prior to exercising the right to remove an absentee board member pursuant to this provision, because holding public office is a significant right, the authors strongly suggest that a township enact specific rules to support such a decision if one is made. Such rules should specify what constitutes an "unexcused" absence and what procedures will be used to determine whether an absence is excused or unexcused. Township boards should be careful not to discriminate between public officials in enforcing an absence policy. It would be difficult to claim that one trustee who went to Florida for three months in the winter and missed

six meetings was "excused" for those absences but that another trustee who missed six consecutive meetings over the summer because they conflicted with her coaching responsibilities was "unexcused," unless the basis for an excused absence was clearly specified in advance.

The Illinois Supreme Court has held that elected officials have a property right in their position that would require due process notice and hearing protections as a prerequisite to removal from office by authority granted through statute or ordinance prior to the end of the term of office. East St. Louis Fed'n of Tchrs., Local 1220 *et al*. v. East St. Louis School Dist. No.189 Fin. Oversight Panel, 178 Ill.2d 399, 687 N.E.2d 1050 (1997). The due process notice and hearing do not provide elected officials with immunity from removal of office. If the elected officials are found to be guilty of misconduct or have not complied with other prerequisites for holding office such as maintaining proper residence, they can be legally removed while they are serving their term. The due process pre-termination notice and hearing are simply implemented to safeguard against mistaken or unjustified actions of removal carried out against an elected official. Due process can be accomplished by a court hearing or, where the power appears to rest with the legislative body, the hearing can be conducted before the township board.

III. ANNUAL AND SPECIAL TOWNSHIP MEETINGS

A. Annual Town Meeting

1. Date and Time

The annual town meeting, held for the transaction of the business of the township, must occur on the second Tuesday of April in each year after 6 p.m. 60 ILCS 1/30-5. The annual town meeting (or special town meeting) cannot be held earlier than 6 p.m. unless the time is changed by the electors at a duly convened meeting. 60 ILCS 1/40-5; 60 ILCS 1/30-30. The words "town meeting" have a definite and well settled meaning in township law and are uniformly used to describe the annual meetings of the town for the purpose of electing township officers and transacting such business as the electors are by law authorized to transact. Chicago I. & R. Co. v. Mallory, 101 Ill. 583 (1881). The place of holding annual town meetings must be some convenient place in the township fixed by the township board. 60 ILCS 1/30-15. Whenever the date conflicts with the celebration of Passover or Ramadan, the township board may postpone the annual town meeting to the first Tuesday following the last day of Passover or Ramadan. 60 ILCS 1/30-5.

Elections for township officers are held in accordance with the consolidated schedule of elections prescribed by the general election law. 60 ILCS 1/30-5. Whenever the consolidated election as provided for in the Election Code is rescheduled to the second Tuesday in April, the annual town meeting must be held on the third Tuesday in April at the time designated by the electors or the township board. 60 ILCS 1/30-5.

2. Notice of Annual Town Meeting

Notice of the time and place of holding annual and special town meetings is given by the township clerk (or, in the clerk's absence, the supervisor, assessor, or collector) by posting written or printed notices in three of the most public places in the township at least 15 days before the meeting and, if there is an English language newspaper published in the township, by at least one publication in that newspaper before the meeting. 60 ILCS 1/30-10. If the above procedures are followed, the township electors are charged with notice of the time of the meeting and with knowledge that any and all corporate business of the township may then be lawfully transacted. Thorp v. King, 42 Ill. App. 513 (1891). Not less than 15 days before the annual meeting, the township board shall adopt an agenda for the annual meeting. A group of fifteen or more registered voters in the township may request additional agenda items for

consideration by the electors to the township clerk by March 1. The agenda adopted by the Board shall include such requests if relevant to the powers granted to the electors under the Township Code. 60 ILCS 1/30-10(b). If the agenda item is not included on the agenda for a township annual meeting, fifteen electors may request the township clerk to order a special meeting. However, again, the meeting must be relevant to the powers granted to the electors under the Township Code. 60 ILCS 1/35-5. A 2002 case involving county governments raised some doubt as to whether new matters added to an agenda can perhaps be discussed but not acted upon. See Rice v. Bd. of Adams Cnty., 326 Ill.App.3d 1120 (4th Dist. 2002). This could also apply to townships, but because township electors are required to have only one meeting per year, and because the statute allows the agenda to be added to by electors in accordance with the procedures outlined above (so long as the agenda item is relevant to the powers granted to the electors under the Township Code), in order to allow both discussion and action, there is a strong argument that action may be taken if the statutory procedures are followed.

3. Admission to Meeting

Electors at the meeting must be verified as voters registered within the township by the township clerk or a designee of the township clerk through the use of township voter registration lists obtained by the township clerk from the election authority having jurisdiction over the township and updated to include voters registered no less than 28 days before the day of the meeting. 60 ILCS 1/40-5.

4. Call to Order

The electors present are called to order by the township clerk if there is a clerk and he or she is present. If there is no township clerk or if the township clerk is not present, the electors may elect by acclamation one of their number as chairman. 60 ILCS 1/40-5.

5. Recessing to Move to Larger Hall

If electors desire admittance to the meeting but cannot be admitted because of the size of the meeting hall, the chairman may immediately recess the meeting to a time as soon as practicable and to a place sufficiently large to accommodate at least the number of electors present at that time within the meeting hall and those outside the meeting hall desiring to be admitted. 60 ILCS 1/40-5.

6. Election of Moderator

The electors present must choose one of their number to preside as moderator of the meeting. A township official may serve as moderator. Before entering upon the duties of the office, the moderator must take an oath, administered by the township clerk or chairman or some other officer authorized to administer oaths, to faithfully and impartially discharge the duties of the office. The moderator of the meeting presides at the meeting, announces the business before the meeting, preserves order, and decides all questions of order. The moderator has the same power and is subject to the same penalties in connection with his or her conduct as moderator as are judges of election under the provisions of the general election law. 60 ILCS 1/40-5.

7. Minutes

The township clerk acts as clerk of the meeting and keeps faithful minutes of the proceedings in a book to be known as the township record. The clerk enters every order or direction and all rules and regulations made by the meeting. The entry must be signed by the clerk and the moderator of the meeting. 60 ILCS 1/40-10.

8. Motions

All questions upon motions made at town meetings are determined by a majority of the electors present and voting, and the moderator ascertains and declares the result of the vote upon each question. When the result of any vote is questioned by one or more of the electors present, the moderator makes the vote certain by causing the voters to rise and be counted or by a division of the voters. 60 ILCS 1/40-15. The amount of time that might be required for balloting at a town meeting is not constitutionally significant so long as all qualified electors have equal opportunity to attend and vote. Smith v. Proviso, 13 Ill. App. 3d 519, 301 N.E.2d 145 (1st Dist. 1973).

9. Close of Business of the Meeting

When the business of the meeting is concluded, the moderator must announce that fact. After the announcement is made, all miscellaneous business is deemed concluded for that day unless the electors order otherwise. No question that has been disposed of before the announcement may be thereafter reconsidered unless the motion for reconsideration is sustained by a number of votes equal to at least a majority of all the names

entered on the poll list on that day up to the time the motion is made. 60 ILCS 1/40-20.

10. Disorderly Conduct

If any person acts in a disorderly manner at any meeting and, after notice from the moderator, persists in that conduct, the moderator may order the person to withdraw from the meeting. If the person refuses to withdraw, the moderator may order any police officer or other person to take the disorderly person from the meeting and confine him or her in some convenient place until the meeting is adjourned. The person refusing to withdraw may be fined a sum not exceeding $10 for the use of the township to be recovered in a civil action in the name of the township in the circuit court. 60 ILCS 1/40-25.

11. Parliamentary Law and Rules of Procedure

There are no generally established statutory principles of parliamentary law. The practice of the courts is to treat rules of procedure and parliamentary law practices with great liberality. Nevertheless, every board member ought to have a working knowledge of at least some of the more elementary rules of parliamentary procedure. A good resource for this purpose is Robert's Rules of Order in its latest edition. Because the copyright has lapsed on the original rules of order, many editions and commentaries are available.

The appellate court had the opportunity to consider the powers of a governmental entity, in this case a city council, to adopt and amend its rules. In Roti v. Washington, 114 Ill. App. 3d 958, 450 N.E.2d 465 (1st Dist. 1983), the court held that each city council is entitled to make its own rules and that a newly elected council cannot be bound by the rules set by the previous council. The court accordingly ruled that the new council's adoption of rules of order by a majority was proper even though the adoption had the effect of amending certain rules of the previous council and of "violating" the prior council's rules requiring a supermajority vote to amend the rules. Several years later, the same council voted to reduce the supermajority requirements for amending rules to a simple majority. That amendment was effected by a simple majority, achieved when the mayor cast a tie-breaking vote. The appellate court accepted the argument that the power to enact is the power to repeal and held that the amendment of the supermajority rule by a simple majority was proper. Roti v. Washington, 148 Ill. App. 3d 1006, 500 N.E.2d 463 (1st Dist. 1986).

Therefore, it appears that a simple majority of a board retains its power to make and amend its rules despite the existence of rules, either self-imposed or imposed by a prior council, including those rules that require a supermajority vote to amend rules. However, the proper course of action in exercising that power is first to amend the rules applicable to amending rules and then to adopt the new desired rules. If the rules applicable to amending rules are not amended first, any amendments attempted in violation of those rules may be invalid. In recent years, courts have been far more sympathetic to the will of a new council majority for that reason, and it is not clear that courts would continue to require a council to modify its rules of procedure before attempting in a clear effort to take a different course of action. Courts probably would look, among other items, to the extent that the modification in the procedure deprived the public of some opportunity to affect the government's action.

Our legal system offers many instances in which courts appear to apply inconsistent rules depending on the nature of the cases before them. Certain courts have held governmental bodies to a fairly rigid adherence to their own rules. A failure to follow such rules generally results in a finding of invalidity or improper action. Sometimes, however, courts take a different approach. In Ill. Gasoline Dealers Ass'n. v. Chi., 119 Ill.2d 391, 519 N.E.2d 447 (1988), the Illinois Supreme Court refused to review whether the City of Chicago had violated one of its procedural rules in passing a vehicle fuel tax ordinance, quoting Chirikos v. Yellow Cab Co., 87 Ill. App. 3d 569, 410 N.E.2d 61, 65, (1st Dist. 1980):

> This court cannot handle matters which in effect are attempts to overrule decisions of a legislative body based upon alleged failure to follow requirements imposed by that body itself. . . . We have authority to invalidate legislation adopted by the city council only upon grounds that the enactment violates a provision of the Federal or State constitutions or violates the mandates of a State or Federal statute.

See also, Ealey v. Bd. of Fire and Police Comm'rs. of City of Salem, 188 Ill. App. 3d 111, 544 N.E.2d 12 (5th Dist. 1989) (failure of board to follow its own rules in conduct of disciplinary hearing overlooked when court found employee was not prejudiced by such action). Because these two views of judicial intervention exist almost side by side, it is a good idea to pay attention to and strive for a strict adherence to local procedural rules.

B. Special Town Meetings (of Electors)

1. Date and Time

Special town meetings are held when the township board (or a group of at least 15 voters of the township) files in the office of the township clerk a written statement that a special meeting is necessary for the interests of the township and sets forth the object of the meeting. 60 ILCS 1/35-5. The special town meeting must be held no less than 14 nor more than 45 days after the written request is filed in the office of the township clerk. (Note: this requirement does not apply to special township board meetings.) Notice of a special town meeting is given in the same manner and for the same length of time as for the annual meeting. (See Section III(A)(2) herein.) 60 ILCS 1/35-10. The electors may fix the hour at which special township meetings are held, but special township meetings may not begin before 6 p.m. 60 ILCS 1/35-5;60 ILCS 1/35-30. (For information on special township board meetings, please see Chapter V.) No special township meeting shall be convened unless 15 or more electors are present. An elector is a person who has registered to vote within the township no less than 28 days before the special township meeting. If a special township meeting is not convened because of an absence of 15 or more electors, that special township meeting shall not be re-convened unless all procedures for a special township meeting are again completed. 60 ILCS 1/35-15.

2. Postponed Subjects/Agendas

When the special town meeting is called, the electors may take any action that could have been taken at an annual town meeting. 60 ILCS 1/35-25. This action includes matters that may have been postponed for want of time at the preceding annual meeting to be considered at a future town meeting. 60 ILCS 1/35-20. The Illinois Appellate Court, in an Adams County matter, held that a government can discuss but cannot act on matters unless they are specified on the regular or special meeting agenda. Rice v. Bd. of Trustees of Adams Cnty., 326 Ill. App. 3d 1120 (4th Dist. 2002). While this requirement would probably apply to a township board meeting, whether it would apply to electors at a special town meeting is questionable, for the only items of business to be discussed at a special town meeting are those that have been set forth in the written statement filed in the office of the township clerk. As the ability to add agenda items on the night of an annual town meeting has been nullified as of July 2008 when the Township Code was amended to require that fifteen registered voters of a township submit agenda items to

the board for consideration by March 1, adding new agenda items at a special town meeting that were not included in the original notice to the clerk is doubtful. 60 ILCS 1/30-10(b). The Township Code now requires that a special town meeting may be held when the township board (or at least 15 voters of the township) files in the office of the township clerk a written statement that a special meeting is necessary for the interests of the township and the statement sets forth the objects of the meeting, which must be relevant to powers granted to electors under the Township Code. Consequently, items not approved by the township board or listed in the written statement of 15 or more registered voters filed with the clerk would not appear on the agenda. 60 ILCS 1/35-5, 60 ILCS 1/35-10. (See Section A.2 of this Chapter.)

3. Vacancies in Township Offices

If a vacancy exists in a township office and the vacancy is not filled within 60 days, the electors at a special town meeting may select a qualified person to fill the vacancy and to serve until the expiration of that term. At the meeting, the electors may select the replacement township officer by voice vote, and the person receiving the greatest number of votes shall be declared to be elected as township officer. 60 ILCS 1/35-35.

The General Assembly recently passed P.A. 101-0104, which amends the Township Code, provided that if there is a vacancy in the office of township supervisor, a trustee shall be appointed deputy supervisor to perform the ministerial functions of that office until the vacancy is filled, at which point the appointment of the "deputy supervisor" is terminated. If the position is temporarily vacant, the deputy may perform the ministerial functions of the office until the township supervisor submit a written statement to the board that they are able to resume their duties.

C. Powers the Electors May Exercise at an Annual Town Meeting

The electors duly assembled at an annual or special town meeting have the corporate capacity to exercise the powers granted to them by the Illinois General Assembly and no others. An elector is a person registered to vote within the township no less than 28 days before the date of the annual meeting. Before establishing or increasing any township tax rate that may be established or increased by the electors at the annual town meeting, a petition containing the signatures of not less than 10% of the registered voters of the township must be presented to the township clerk authorizing that action. 60 ILCS 1/30-20. The electors represent the

corporate authorities and may take all necessary measures and give directions to the township board for the exercise of their corporate powers. 60 ILCS 1/30-25. Anders v. Danville, 45 Ill. App. 2d 104, 195 N.E.2d 412 (1964). Some of the specific actions that the electors may take at an annual town meeting are specified below. 60 ILCS 1/30-20.

1. Property Record System

The electors may expend monies for the preparation, establishment, and maintenance of a detailed property record system to provide information useful to the assessment officials. The electors may enter into contracts with persons, firms, or corporations for the preparation and establishment of the record system. The record system must be available to all assessing officials and include up-to-date and complete tax maps (except where those maps are otherwise already available or ordered), ownership lists, valuation standards, and property record cards, including appraisals, for all or any part of the property in the township in accordance with reasonable rules and procedures prescribed by the Department of Revenue. The system and records are not considered assessments and do not limit the powers and duties of assessing officials. 60 ILCS 1/30-45.

2. Purchase, Sale and Use of Real and Personal Property

a. Purchase, Sale and Lease

The electors may make all orders for the purchase, sale, conveyance, regulation, or use of the township's corporate property, including the direct sale of single township road district property, that may be deemed conducive to the interests of its inhabitants, including the lease, for up to 10 years at fair market value, of corporate property for which no use or need during the lease period is anticipated at the time of leasing. However, effective in 2008, if the lease is for a wireless communications tower, then the electors may authorize a lease for up to 25 years. The electors may delegate the power to purchase, sell, or lease property to the township board for a period of up to 12 months, and the township board may specify properties being considered. The property may be leased to another governmental body, however, or to a not-for-profit corporation that has contracted to construct or fund the construction of a structure or improvement upon the real estate owned by the township and that has contracted with the township to allow the township to use at least a portion of the structure or improvement to be constructed upon the real estate leased and not otherwise used by the township, for any term not exceeding 50 years and for any consideration. In the case of a not-for-

profit corporation, the township must hold a public hearing on the proposed lease. The township clerk must give notice of the hearing by publication in a newspaper published in the township or in a newspaper published in the county and having general circulation in the township if no newspaper is published in the township and by posting notices in at least five public places at least 15 days before the public hearing. 60 ILCS 1/30-50(a).

b. Tax for Purchase of Property

If a new tax is to be levied or an existing tax rate is to be increased above the statutory limits for the purchase of the property, however, no action otherwise authorized may be taken unless a petition signed by at least 10% of the registered voters residing in the township is presented to the township clerk. If a petition is presented to the township clerk, the clerk must order a referendum on the proposition. The referendum must be held at the next annual or special town meeting or at an election in accordance with the general election law. If the referendum is ordered to be held at the town meeting, the township clerk must give notice that at the next annual or special town meeting the proposition will be voted upon. The notice must set forth the proposition and be given by publication in a newspaper published in the township or in a newspaper published in the county and having general circulation in the township. Notice must also be given by posting notices in at least five public places at least 15 days before the town meeting. If the referendum is ordered to be held at an election, the township clerk certifies that proposition to the proper election officials, who submit the proposition at an election. 60 ILCS 1/30-50(b). (For further information on tax levies, see Chapter IX on Township Finances.)

c. Tax on Leased Property

If the leased property is utilized in part for private use and in part for public use, those portions of the improvements devoted to private use are fully taxable. The land is exempt from taxation to the extent that the uses of the land are public and taxable to the extent that the uses are private. 60 ILCS 1/30-50(c).

d. Resolution Required for Lease/Sale of Property

Before the township makes a lease or sale of township or road district real property, the electors must adopt a resolution at either an Annual or Special Town Meeting called for that purpose, stating the intent to lease or sell the real property, describing the property in full, and stating the terms

and conditions the electors deem necessary and desirable for the lease or sale. A resolution stating the intent to sell real property must also contain pertinent information concerning the size, use, and zoning of the property. The value of real property is determined by a State licensed real estate appraiser. The appraisal must be available for public inspection. The resolution may direct the sale to be conducted by the staff of the township or by listing with local licensed real estate agencies (in which case the terms of the agent's compensation must be included in the resolution). 60 ILCS 1/30-50(d).

The clerk shall publish the resolution or personal property sale notice in a newspaper published in the township. However, if no newspaper is published in the township, the clerk shall post the resolution or personal property sale notice in five (5) of the most public places in the township. The clerk shall also post the resolution or personal property sale notice at the office of the township or road district. With this notice/resolution must be the following information: the date by which bids must be received (not less than 30 days after the posting); and the time, place and date at which bids shall be opened, which shall be at a regular meeting of the township board. 60 ILCS 1/30-50(d).

The township or road district may dispose of personal property any time during the year by a vote of the township board or request of the township highway commissioner.

e. Accepting Bids

All bids shall be opened by the clerk (or someone appointed by the clerk) at the regular meeting of the township board described in the notice. With respect to township personal property, the township board may accept the high bid or any other bid determined to be in the best interests of the township by a majority vote of the board. With respect to township real property, the township board may accept the high bid or any other bid determined to be in the best interests of the township by a vote of three-fourths of the township board then holding office but in no event at a price less than 80% of the appraised value. With respect to road district property, the highway commissioner may accept the high bid or any other bid determined to be in the best interests of the road district. In each case, the township board or commissioner may reject any and all bids. 60 ILCS 1/30-50(d). The township board or the highway commissioner may authorize the sale of personal property by public auction conducted by an auctioneer licensed under the Auction License Act or through an approved Internet auction service. Selling Property to Another Governmental Body

This notice and competitive bidding procedure shall not be followed when real or personal property is leased to another governmental body or when property is declared surplus by the township board or the highway commissioner and sold to another governmental body. 60 ILCS 1/30-50(d).

3. Surplus Property

The majority of electors present at an annual or special town meeting may declare property of the township to be surplus for purposes of donating the property to a historical society or other not-for-profit corporation. 60 ILCS 1/30-53.

4. Public Graveyards

The electors may authorize the township board to appropriate monies, in excess of the sum provided in "The Public Graveyards Act" for the purpose of putting any old, neglected graves and cemeteries in the township in a cleaner and more respectable condition. 60 ILCS 1/30-60.

5. Graves of Former Armed Forces Members

The electors may provide for the decoration and maintenance of graves of persons who at any time served in the Armed Forces of the United States that are within the township. 60 ILCS 1/30-65.

6. Court Room and Office Space

The township electors at any annual or special town meeting may set aside and maintain space in any township building or may obtain and maintain space in privately owned buildings for court room and office use by the circuit court of the county in which the township is located. The electors may supply all maintenance employees and supplies needed to maintain the court room and office space to assist the court in any way the court deems fit in conducting its business. 60 ILCS 1/30-70.

7. Zoning

The electors may authorize the township board to exercise its zoning powers, and when a township makes a decision on a special use, variance, rezoning, or other amendment to a zoning ordinance, such decision is considered a legislative rather than an administrative decision. Consequently, such decisions are entitled to *de novo* judicial review. 60

ILCS 1/30-75; 60 ILCS 1/110-50.1. See Chapter VI.H. for further information.

8. Trees, Leaves, and Brush

The corporate authorities of a township may, by ordinance, authorize the use of general road and bridge funds or town funds for the purpose of collecting, transporting, and disposing of brush and leaves generated from properties that are contiguous to roads as defined by section 2-103 of the Illinois Highway Code or located within the unincorporated areas of the township. 60 ILCS 1/30-117. The corporate authorities of a township are expressly allowed to take such action by ordinance and without referendum. 60 ILCS 1/30-117.

The electors may offer premiums and take actions to induce the planting and cultivating of trees along the highways in the township. The electors may protect and preserve trees standing along or on highways and may purchase, plant, and cultivate trees along the streets and highways in the township. 60 ILCS 1/30-85. See City of Mt. Carmel v. Shaw, 52 Ill. App. 429 (1894), *rev'd on other grounds,* 155 Ill. 37, 39 N.E. 584 (1895).

9. Fences

The electors may make rules and regulations for ascertaining the sufficiency of all fences in the township and may determine what a lawful fence within the township is, except as otherwise provided by law. 60 ILCS 1/30-90.

10. Livestock and Poultry Running at Large

The electors may restrain, regulate, or prohibit the running at large of poultry, cattle, horses, mules, asses, swine, sheep, or goats and determine the time and manner in which those animals may go at large, unless they are restrained from running at large in some manner provided by law. 60 ILCS 1/30-95.

11. Pounds and Pound Masters

The electors may establish and maintain pounds at places within the township that are deemed necessary and convenient and may discontinue any pounds within the township. 60 ILCS 1/30-100. When a pound is erected, it is run under the care and direction of a pound master. The electors may determine the number of pound masters, prescribe their

duties, and elect pound masters either by ballot or in another manner that they determine. 60 ILCS 1/30-105. Alternatively, the electors may provide for the appointment of pound masters.

12. Impounding and Sale of Animals

The electors may authorize the distraining, impounding, and sale of cattle, horses, mules, asses, swine, sheep and goats for penalties incurred and the costs of the proceeding. The sale of animals distrained or impounded is conducted, as near as may be practicable, according to the law regulating sales of property by sheriffs for the satisfaction of a judgment of the circuit court. The owner of the animals may redeem them from the purchaser at any time within three months from the date of the sale by paying the amount of the purchaser's bid, with reasonable costs for their keeping, and interest upon the amount bid at the rate of 10% per annum. The electors may also authorize the impounding of dogs found running at large and provide for their destruction at the end of a reasonable period of time if they are not claimed and the cost of impounding paid. 60 ILCS 1/30-110.

13. Public Wells

The electors may construct and keep in repair public wells or other watering places and may regulate the use of those wells and watering places. 60 ILCS 1/30-115.

14. Garbage

The electors may prevent the deposit of night soil, garbage, or other offensive substances within the limits of the township. This section does not apply to refuse disposal facilities regulated by the Illinois Department of Public Health and the county in which the facilities are located. 60 ILCS 1/30-120.

15. Parking and Vehicles

The electors may adopt ordinances regulating the standing or parking of recreational vehicles on township roads within each township. 60 ILCS 1/30-125.

The electors may by ordinance declare inoperable motor vehicles, whether on public or private property, to be a nuisance and may authorize fines to be levied for the failure of any person to obey a notice from the township stating that the person is to dispose of any inoperable motor

vehicles under his or her control. “Inoperable motor vehicle” means any motor vehicle from which, for a period of at least seven days or any longer period of time fixed by ordinance, the engine, wheels, or other parts have been removed, or on which the engine, wheels, or other parts have been altered, damaged, or otherwise treated so that the vehicle is incapable of being driven under its own motor power. “Inoperable motor vehicle” does not include a motor vehicle that has been rendered temporarily incapable of being driven under its own motor power in order to perform ordinary services or repair operations. 60 ILCS 1/30-130.

The electors may authorize a law enforcement agency with applicable jurisdiction to remove, after seven days from the issuance of the township notice, any inoperable motor vehicle or parts of such a vehicle. The rules do not apply to any motor vehicle that is kept within a building when not in use, to an operable historic vehicle over 25 years of age, or to a motor vehicle on the premises of a place of business engaged in the wrecking or junking of motor vehicles. 60 ILCS 1/30-130.

16. Business Regulations

The electors may authorize the licensing, regulation and location of all places of business of purchasers, traders, and dealers in junk, rags, and any secondhand articles, including motor vehicles, except in cities, villages, and incorporated towns in the township that, by ordinance, provide for the licensing, regulation or location of places of business of those purchasers, traders, and dealers. 60 ILCS 1/30-135.

In counties with a population of less than 3,000,000, the electors may regulate hawkers, peddlers, pawnbrokers, itinerant merchants, and transient vendors of merchandise. The township board in those counties may require that any such person register his or her name and the name of any firm he or she represents with the township clerk and may make reasonable restrictions of the hours during which he or she may engage in door-to-door solicitation. The township board in those counties also may prohibit the activities of any categories of persons as it determines to be in the best interest of township residents. These regulations do not apply, however, within the boundaries of a city, village or incorporated town. 60 ILCS 1/30-140. Under Illinois law, license fees can only be in amounts that bear a reasonable relationship to the cost of enforcement. Unless specific statutory authority is given, the license fee or other regulatory fees cannot be converted to what amounts to taxes for fundraising purposes.

17. Mental Health Services

If a township is not included in a mental health district organized under the Community Mental Health Act, 405 ILCS 20/0/1, *et seq*., the electors may authorize the board of trustees to provide mental health services (including services for the alcoholic and the drug addicted and for persons with intellectual disabilities) for residents of the township by disbursing existing funds if available by contracting with mental health agencies approved by the Department of Human Services, alcoholism treatment programs licensed by the Department of Public Health, and treatment facilities and other services for substance use disorders approved by the Department of Human Services. To be eligible to receive township funds, an agency, program, facility, or other service provider must have been in existence for more than one year and must serve the township area. 60 ILCS 1/30-145.

18. Police Protection

a. Counties Less than 1,000,000

In counties having a population of less than 1,000,000, the electors may authorize the township board to contract with one or more incorporated municipalities lying wholly or partly within the boundaries of the township to furnish police protection in the area of the township that is not within the incorporated area of any municipality having a regular police department. 60 ILCS 1/30-150.

In counties having a population of less than 1,000,000, the electors may authorize the township board to contract with the county sheriff of the county within which the township is located to furnish police protection in the unincorporated area of the township. The township board may adopt a resolution declaring the unincorporated area of the township a special police district for tax purposes. Proof of the adoption of the resolution authorizes the county clerk to extend a tax upon the special police district in the amount specified in the annual township tax levy but not to exceed a rate of .10% of the value of taxable property as equalized or assessed by the Department of Revenue.

Whenever a resolution creating a special police district has been adopted, the township board must order the proposition submitted to the voters within the territory of the proposed special police district at an election. The clerk certifies the proposition to the proper election officials. Notice must be given and the election conducted in accordance with the general election law. 60 ILCS 1/30-155.

b. Counties More than 1,000,000

In counties having a population of 1,000,000 or more, the electors may authorize the township board to contract with one or more municipalities in the township or with the county within which the township is located to furnish police protection in the unincorporated area of the township. The township board may declare the unincorporated area of the township a special police district for tax purposes. Proof of the declaration authorizes the county clerk to extend a tax upon the special police district in the amount specified in the annual township tax levy but not to exceed a rate of .10% of the value of taxable property as equalized or assessed by the Department of Revenue. 60 ILCS 1/30-160.

19. Fire Protection

The electors may authorize the township board to contract with one or more municipalities in the township or with the county within which the township is located to furnish fire protection in the unincorporated areas of the township. With the approval of a majority of the voters in the unincorporated area of a township, the township board may declare the unincorporated area of the township a special fire district for tax purposes. Proof of that declaration authorizes the county clerk to extend a tax upon the special fire district in the amount specified in the annual township tax levy but not more than a rate of 0.40% of the value of taxable property as equalized or assessed by the Department of Revenue. Any territory within such a special fire district that is annexed to a municipality that provides fire protection services within its corporate limits is automatically disconnected from the township fire protection taxing district. 60 ILCS 1/30-165.

The township board may fix, charge and collect fees against persons, businesses, and other entities who are not residents of the township for fire protection services, so long as the fee does not exceed the reasonable cost of the service. However, the fee may not be assessed against residents of the township or against persons requesting coverage for an unprotected area who pay the township an amount equal to this fire protection fee under Article 200 of the Code. The charge for services cannot exceed $125 per hour per vehicle, nor may it exceed $35 per hour per firefighter responding to a call, although in the case where a township incurs extraordinary expenses, an additional charge may be levied. No charge shall be made when the total charge would be less than $50. Any revenue from these fees is to be deposited in the township's general fund. 60 ILCS 1/30-167.

Further, townships may receive reimbursement for fire protection response to a structural collapse, tactical rescue, and other *specialized* rescue services. The fee may be charged to a party on a finding of fault by the Occupational Safety and Health Administration or the Illinois Department of Labor. The fee collected may not exceed the reasonable cost of providing the service and may not be more than $125 per hour per vehicle and $35 per hour per firefighter. 60 ILCS 1/200-14a. Townships may also recover reasonable costs for the provision of *technical* rescue services, without a finding of fault. 60 ILCS 1/200-14b.

Township fire departments are considered "consumers" for the purposes of the Illinois New Vehicle Buyer Protection Act. 815 ILCS 380/2. Commonly known as the Illinois "Lemon Law," when purchasing or leasing a new vehicle for at least one year, a township fire department will be protected. In general, if a seller is unable to make the new vehicle conform to the seller's express warranties after a reasonable number of attempts, the consumer township may get a new vehicle or sell the vehicle back to the seller. 815 ILCS 380/3.

20. Mosquito Abatement

The electors may authorize the township board to contract for the furnishing of mosquito abatement services in the unincorporated area of the township. The township board may then adopt a resolution declaring the unincorporated area of the township a mosquito abatement district for tax purposes. Proof of the resolution authorizes the county clerk to extend a tax upon the mosquito abatement district in the amount specified in the annual township tax levy but not more than a rate of 0.075% of the value of taxable property as equalized or assessed by the Department of Revenue. Whenever a resolution creating a mosquito abatement district has been adopted, the township board must order the proposition submitted to the voters within the territory of the proposed district at an election. 60 ILCS 1/30-170. Any territory within such a mosquito abatement district that is annexed to a municipality that provides mosquito abatement services within its corporate limits is automatically disconnected from the township mosquito abatement taxing district.

21. Illinois Municipal Retirement Fund

The electors may authorize the supervisor to file an application for the township and all other bodies politic established by or subject to the control of the electors to participate in the Illinois Municipal Retirement Fund under the "Illinois Pension Code." 60 ILCS 1/30-180.

22. Transfer of Money to City or Village

In townships wholly within the limits of an incorporated city or village, the electors may transfer any money in the treasury of the township to the treasury of the city or village. The money shall be used by the city or village in its corporate capacity for (i) constructing or repairing roads, bridges, approaches, or causeways over which it has control, supervision, and jurisdiction, or (ii) planting and cultivating trees along the streets and highways in the city and township. The electors may give full power and authority to expend any money in the city or village treasury that it has to the credit of the township for any of the purposes designated in this Section as decided by the electors or by the township board. 60 ILCS 1/30-185. Also see paragraph 29 below on intergovernmental cooperation.

23. Rules and Fines

The electors may make all bylaws, rules, and regulations deemed necessary to carry into effect the powers granted and may impose fines deemed proper, except when a fine or penalty is already allowed by law. 60 ILCS 1/30-190. No offense may be classified in excess of a petty offense. The electors may apply all penalties, when collected, in the manner deemed most to the interests of the township. 60 ILCS 1/30-195.

In townships in which there are incorporated cities or villages, the boundaries of which are co-extensive with the limits of the township, and in townships that lie wholly within the limits of an incorporated city or village, the electors cannot exercise the several powers with respect to weeds and trees, fences and livestock, pounds and pound masters, garbage, and dealers in secondhand articles. 60 ILCS 1/30-200.

The township clerk must cause all bylaws, rules, and regulations of the township to be published within 20 days after their adoption by posting in three public places in the town. 60 ILCS 1/40-30. The clerk also shall cause the bylaws, rules and regulations to be inserted once in a newspaper published in the township, if there is such a newspaper. All by-laws, rules, and regulations take effect and are in force from the day of their adoption unless otherwise directed by the electors.

24. Advisory Referenda

Any group of registered voters may request an advisory question of public policy for consideration by the electors at the annual meeting by

giving written notice of the specific advisory question to the township clerk in the same manner as required for an agenda item under subsection (b) of Section 30-10. The agenda published by the township board shall include any such advisory question if the request is timely filed. By a vote of the majority of electors present at a town meeting, the electors may authorize that an advisory question of public policy be placed on the ballot at the next regularly scheduled election in the township. The township board certifies the question to the proper election officials who submit the question in accordance with the general election law. 60 ILCS 1/30-205. Please see Chapter VIII, Section J, for more details.

25. Distribution to Not-For-Profit Agencies

Whenever the electors attending an annual or special town meeting determine that the general township fund of the township contains funds not derived from a township tax levy that are not needed for township purposes during the remainder of the then current fiscal year, the electors may, by a resolution adopted by the affirmative vote of two-thirds of the electors attending the meeting, direct that all or any portion of the funds be distributed to a for-profit (or not-for-profit) and non-sectarian organization that provides services or facilities to the township's older inhabitants or to the board of managers of a township community building to be used for the operation and maintenance of a non-sectarian activity and guidance center for the older inhabitants of the township. The electors attending the annual or special town meeting may also, by a resolution adopted by the affirmative vote of two-thirds of those electors attending, direct that all or a portion of the available funds be expended directly by the township to provide the services or facilities for older inhabitants described in this Article. 60 ILCS 1/220-15.

Any funds paid over to a for-profit (or not-for-profit) and nonsectarian organization or to the board of managers of a township community building must be used solely for the operation or maintenance of a nonsectarian service, activity, facility, or guidance center or for other services provided on a for-profit (or not-for-profit) and nonsectarian basis for the older inhabitants of the township. 60 ILCS 1/220-35.

26. Taxes

Electors are authorized to adopt a revised tax schedule for township purposes. 60 ILCS 1/235-5; 60 ILCS 1/235-10.[4] They may also authorize

[4] Allowable purposes under 60 ILCS 1/235-5 now include executing the rights, powers, duties and responsibilities from a road district abolished under Section 6-

an increased tax rate for road and bridge purposes (605 ILCS 5/6-504); tax for construction of bridges at joint expense of county and road district and obtain aid from the county (605 ILCS 5/6-508); levy an annual tax for equipment and building (605 ILCS 5/6-508.1); request a referendum to issue bonds for road purposes (605 ILCS 5/6-510); petition for tax for permanent road or road improvements (605 ILCS 5/6-601); and request a referendum to repeal a special tax for road purposes. 605 ILCS 5/6-617. For further information on levies, see Chapter IX on Township Finances.

27. Conveyances for Highway Purposes

The electors may convey any land or any interest in land held by the township to the county or state where the conveyance is made for highway purposes. 60 ILCS 1/35-40. See Section C.2.a. of this chapter for the manner and form of the conveyance.

28. Control of Public Graveyards

The electors may vest control of public graveyards not under the control of any corporation, organization, or society in three trustees and may elect the three trustees. 60 ILCS 1/35-45. The electors may authorize the cemetery trustees to levy a tax for the control, management, and maintenance of cemeteries under the Public Graveyards Act.

29. Intergovernmental Cooperation

Article VII, Section 10 of the Illinois Constitution and the Intergovernmental Cooperation Act, 5 ILCS 220/1, *et. seq.*, permit public entities such as townships to enter into contracts with other governmental entities in order to exercise various powers. The exercise of intergovernmental cooperation permits entities such as townships to exercise powers that townships do not have that may actually be exercised by the other entities with whom the townships are contracting. The exercise of intergovernmental cooperation can allow townships to enter into many projects where funds, assets, and personnel can be shared between units of local government.

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33 of the Illinois Highway Code. Townships that have taken these duties over from an abolished road district may tax at a rate determined by adding the rate authorized to be extended under 235-10 to the last rate authorized under Section 6-501 of the Illinois Highway Code. See Public Act 097-0611, effective January 1, 2012

30. Disaster Relief

The electors may authorize the use of general road and bridge funds, permanent road funds, or town funds for the purpose of providing disaster relief and support services approved by the board at a regularly scheduled or special township board meeting. 60 ILCS 1/30-117. Additionally, the General Assembly passed P.A. 102-0024, which amends the Township Code and several other laws to provide that a township's governing body may waive any fees or costs associated with a permit, inspection, or certification of occupancy required by law for various construction projects on residential or commercial properties that are damaged as a result of disaster, emergency, weather event, or any reason deemed warranted in the interests of public safety, welfare, and recovery.

31. Resolution for Transfer Among Township Funds

The legal voters of a township at an annual town meeting or at a special town meeting called for that purpose may, by written resolution by a majority vote of the legal voters present and voting on the resolution, transfer from one or more township funds to any other township fund or funds, or to the general road and bridge fund, or to any fund raised by taxation or bonds upon all the property in the township for roads and bridges, the surplus of any fund or funds over and above an amount necessary to meet township charges and expenses until the time of receiving revenue levied at the next annual town meeting. The fund or funds ordered transferred shall be transferred and paid into the other fund or funds and shall be paid out on proper orders of officers authorized by law to expend the fund or funds. 60 ILCS 1/245-5. Before the electors resolve to transfer such funds, the board must declare the funds surplus.

A resolution adopted under this Section shall specify the estimated amount of the proper and necessary charges and expenses of the township against the fund or funds until the time of the receipt of revenue after the next annual town meeting and the particular amount of surplus of the township fund or funds to be paid over, shall designate the particular fund or funds to be transferred to and paid into, and shall be submitted at the meeting in writing or reduced to writing before any vote is taken on it. Whenever it is desired to submit the resolution at a special town meeting, a special town meeting may be called when the supervisor, together with at least 25 voters of the township, file with the township clerk a written

petition stating the purpose for which the special town meeting is to be called. Upon the filing of the petition, the township clerk shall give notice of the special township meeting in the same manner and for the same length of time as notice is required to be given of the annual town meeting. The notice shall state the object of the special meeting. The special meeting shall be held at the place of the last annual town meeting. 60 ILCS 1/245-5.

32. Township Recycling

The electors may implement and administer a recycling program within the township. 60 ILCS 1/85-13(f).

33. Township Halls and Multi-Purpose Senior Centers

A new law that took effect on July 29, 2010, provides that whenever it is desired to build, purchase, or lease (for a longer period than 10 years) a township hall, a multi-purpose senior center, or a combined township hall and multi-purpose senior center (collectively "township hall"), at least 25 electors may, before the time of giving notice of the annual township meeting (see Chapter III(A) herein), file with the township clerk a petition in writing that the proposition of building, purchasing, or leasing a township hall and issuing bonds for same be submitted to the voters of the township at the next general election. This petition shall clearly state the proposition as follows: "Shall (name of township) borrow $(amount) to (build, purchase, lease) a (township hall, multi-purpose senior center or combination multi-purpose township hall and senior center) and issue bonds for the (building, purchase, or lease)?" The petition shall be filed with the township clerk, who shall certify the proposition to the proper election officials, who shall submit the proposition to the legal voters of the township at an election in accordance with general election law. 60 ILCS 1/140-5. For more information on the issuance of bonds and the tax to pay the bonds, see 60 ILCS 1/140-10 and 60 ILCS 1/140-15, and contact your township attorney.

Alternatively, any township may, by ordinance or resolution, build, purchase, or lease a township hall, multi-purpose senior center, or combination township hall and multi-purpose senior center within the township without referendum approval, if paid for with funds that are not the proceeds of bonds authorized under this Article. 60 ILCS 1/140-5(c).

This new law is likely meant to clarify the procedures for the construction of a township hall following litigation over the proper procedures in Ziller v. Rossi, 395 Ill.App.3d 130 (2d Dist. 2009).

34. Eminent Domain

The township may exercise the power of eminent domain; however all exercise of condemnation authority or power of eminent domain must be consistent with the Eminent Domain Act. 60 ILCS 1/85-12.

IV. THE FREEDOM OF INFORMATION ACT

Collectively, the Open Meetings Act ("OMA") and the Freedom of Information Act ("FOIA" or "Act") are known as the "sunshine laws" because they require public business to be open and accessible. Codified in the state statutes at 5 ILCS 140/1, *et seq.*, the FOIA establishes the minimum rights of the public to inspect an enormously wide range of documents. Effective January 1, 2010, sweeping changes to the FOIA broadened its scope, narrowed exemptions, and increased penalties for violations. Further amendments in 2011 eliminated the need to obtain pre-approval for denials based on "personal information" and created a public body's right to charge certain fees for commercial requests.

Following a lengthy preamble that dramatically indicates the General Assembly's broad policy in favor of access to public records is a specific statutory presumption that all public documents are open to inspection:

> All records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt. 5 ILCS 140/1.2.

Accordingly, if a public body seeks to exempt a document from inspection, the burden is on the public body to "prove" such exemption by clear and convincing evidence. With this high burden and the clear presumption in favor of access, the exemption process may be difficult; thus, close attention to the Act's changes is necessary. The following, in question and answer form, is a guide to the Act. All references to "sections" will be to specific sections of the Act.

A. What is the effective date of the FOIA and why does it matter?

The Freedom of Information Act became effective on July 1, 1984. The appellate court has held that the Act applies to all disclosure requests initiated after its effective date, even if the requested records were prepared or received prior to that date. Carrigan v. Harkrader, 146 Ill. App. 3d 535 (3d Dist. 1986). Since that date, the provisions of the Act have governed the minimum standards by which townships make or are required to make available materials from their files to any "person." "Person," as defined by the Act, means any individual, corporation,

partnership, firm, organization, or association acting individually or as a group. 5 ILCS 140/2(b).

Curiously, however, the FOIA never repealed Section 3a of the Local Records Act, 50 ILCS 205/3a, which still contains requirements for governmental bodies to make financial records available to citizens. In fact, Section 15 of the Local Records Act states that the provisions of Section 3a shall continue to apply to all records and reports prepared or received prior to July 1, 1984, and that for all records and reports prepared or received after July 1, 1984, the Freedom of Information Act will apply. 50 ILCS 205/15. It would thus appear that only financial records prepared or received prior to July 1, 1984, remain covered by the rather crude provisions of Section 3a of the Local Records Act. While that Section allows a keeper of such records to require that a notice in writing be submitted 24 hours prior to inspection, it does not set forth any judicial procedures for contesting a denial, nor is the keeper of the records required to give a specific reason for a denial. Section 3a of the Local Records Act also contains language to the effect that its disclosure aspects were not intended "to invade or assist in the invasion of any person's right to privacy." That language was greatly expanded in the FOIA. It still remains to be seen whether the courts will permit records that could be requested under Section 3a of the Local Records Act to also be requested under one of the provisions of the FOIA. *Accord*, Pecora Oil Co. v. Johnson, 156 Ill. App. 3d 521 (2d Dist. 1987).

B. Who is the Public Access Counselor and what are their duties?

The Attorney General has the power to give written binding and advisory public access opinions. 5 ILCS 140/9.5. These opinions are provided through the office of the Public Access Counselor ("PAC"), housed within the Attorney General's office, and are to focus on compliance with the FOIA and the OMA. Accordingly, the PAC has authority to investigate and issue binding opinions on whether violations of the OMA occurred and to order the release of documents pursuant to the FOIA. The Attorney General is also given subpoena power to enforce the PAC's powers. Accordingly, the PAC serves as a watchdog, with teeth, ensuring that your township complies with all public access laws.

The PAC is charged with many responsibilities, including but not limited to the following: (1) establishing and administering training programs on public access laws; (2) providing educational material and programs on public access laws; (3) resolving disputes over potential violations of the public access laws, by mediating, informally resolving

the dispute or by issuing a binding decision; (4) issuing advisory opinions with respect to public access laws; (5) promulgating rules to implement the powers of the office; and (6) preparing and distributing model policies for compliance with the Freedom of Information Act. See e.g. 5 ILCS 140/3.5 (training program); 5 ILCS 140/9.5 (opinions).

C. What is the basic structure of the FOIA?

The Freedom of Information Act contains a number of substantive sections. Section 1 sets forth the philosophy of the Act (*i.e.*, the preamble mentioned above). Section 2 defines numerous terms, the most important being "public records" itself (see below). Following the definitions are various related provisions that expound on what must be produced, including Section 2.5 that provides all records relating to the obligation, receipt, and use of public funds of the township are public records and subject to inspection and copying. Section 2.10 provides that certified payrolls provided under the Prevailing Wage Act are subject to disclosure (except that the contractors' employees' addresses, telephone numbers, and social security numbers *must be* redacted prior to disclosure). Finally, Section 2.15 provides the disclosure of arrest reports, and Section 2.20 provides for the disclosure of settlement agreements.

Section 3 begins with the basic statement that all public records not exempt under Section 7 of the Act must be made available for inspection or copying and then describes the time schedule under which the records must be furnished and the circumstances under which extensions may be allowed. Section 3.1 and Section 3.2 carve out exception to the otherwise stringent response timeframes for commercial purposes and recurrent requesters. Section 3.5 thereafter sets up the requirements for every public body to appoint Freedom of Information officers and the duties and responsibilities of same.

Section 4 of the Act requires public bodies to prepare, display, make available, and send through the mail, if requested, a brief description of the public body, including a block diagram of its functional subdivisions; certain financial material; the methods whereby the public may request information and public records; and any fees payable for such records. Somewhat related, Section 5 obligates each public body to prepare a reasonably current list of all types of categories of records under its control that were prepared or received after July 1, 1984.

Section 6 establishes the fees that may be charged and the responsibilities of public bodies to produce records in the requested format if available.

Section 7 of the Act contains a lengthy list of exemptions; Section 7.5 contains a list of statutory exemptions (*e.g.*, references to other statutes that contain specific exemptions to the FOIA). Note that some exemptions parallel the Federal Freedom of Information Act; therefore, in some situations federal court cases interpreting the same may be helpful. *See*, Harwood v. McDonough, 344 Ill. App. 3d 242 (1st Dist. 2003).

Section 9 of the Act establishes the process for the public body to deny a FOIA request, and Section 9.5 sets up the appeal process to the PAC. Section 11 establishes a procedure for review via the judicial system, and Section 11.5 provides for administrative review of binding decisions made by the PAC.

D. What is a "Public Body"?

The definition of a "public body" in the Freedom of Information Act is almost identical to the definition of "public body" found in the Open Meetings Act. As far as townships are concerned, the township board and any township committees required to comply with the Open Meetings Act must also comply with the FOIA. Additionally, departments or sub-units of the Township (i.e. the Assessor's office) are covered.

The Open Meetings Act now applies to all committees of public bodies. Accordingly, if a township forms an ad hoc committee to investigate and make a recommendation on a proposed policy, that committee is now subject to the provisions of the Act.

Are individuals covered? The Illinois Appellate Court has ruled that a Chicago alderman (and presumably other individual public officials) is not considered a "public body" and thus is not required to disclose his travel expense records. Quinn v. Stone, 211 Ill. App. 3d 809 (1st Dist. 1991), *app'l den.*, 141 Ill. 2d 559 (1991). However, in an early request for review letter concerning the disclosure of e-mails, discussed further below, the PAC's office noted that "while conducting public business, they [township trustees] are acting as a public body in accordance with the FOIA statute." *See*, Pre-Authorization Request No. 10-5720. This statement, not supported by any existing statutory language, obviously raises concern and it is unclear whether the PAC will be modifying this position. Of course, even if the PAC is correct, the underlying issue will

still be whether the record created by the individual is subject to disclosure. That said, until the position is modified either by the PAC or a court, township officers should conduct themselves with the understanding that their private activity may eventually be made public.

E. How is the term "Public Records" defined?

"Public records," a term of art used throughout the Act, is broadly defined in Section 2(c), which sets forth a definition containing a multitude of synonyms:

> . . . all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials pertaining to the transaction of public business.

In addition, Section 2.5 provides that all records relating to the obligation, receipt, and use of public funds of a public body are subject to inspection and copying by the public. Settlement agreements are included via Section 2.20.

The preamble in Section 1 relieves a public body of the burden of *preparing* a public record in response to a request. Additionally, Illinois courts have addressed the issue of whether a public body must create a record not previously existing in order to satisfy a request. In Kenyon v. Garrels, 184 Ill. App. 3d 28 (4th Dist. 1989), the court ruled that plaintiff's request for a letter answering questions rather than for specified records was not a proper FOIA request because no existing record contained the answers and a new record would have to be created to answer the request. Similarly, a public body is not required to furnish records that have been lost. *See also* Nuzzi v. St. George Community Consolidated School Dist. No. 258, 2008 WL 4671416 (C.D. Ill. 2008); Workmann v. Ill. State Bd. of Educ., 229 Ill. App. 3d 459 (2d Dist. 1992); Fam. Life League v. Ill. Dep't. of Public Aid, 132 Ill. App. 3d 929 (1st Dist. 1985), *rev'd on other grounds, 112 Ill.2d 449, 493 N.E.2d 1054*; Bowie v. Evanston Community Consol. Sch. Dist. No. 65, 128 Ill. 2d 373 (1989); Chicago Tribune Co. v. Dept. of Fin. and Pro. Reguls., 2014 IL App (4th) 130427.

In addition to not being required to prepare a public record, Section 3.3 provides the Act is not intended to "compel public bodies to interpret or advise requesters as to the meaning or significance of the public records." Accordingly, while the FOIA may require the disclosure of certain documents, it does not require officials to answer questions about those documents or explain the same.

Recent PAC opinions have interpreted the FOIA definition of "public records" to include several kinds of documents that are neither created by nor in the possession of the public body. For example, a village was required to provide copies to a FOIA requester of a settlement agreement entered into on behalf of the public body by the lawyers representing its insurance provider, even though those settlement records were not created by the public body and were in the possession of its lawyers. Public Access Opinion Nos. 10-004 and 11-004. Text messages that related to public business were also subject to disclosure under the FOIA even though the texts were created by city aldermen on their personal cell phones and despite the city's clerk and FOIA officer not having direct possession or control of those records. Public Access Opinion No. 11-006.

The easiest way to comply with the findings of recent PAC opinions is to presume that anything that discusses public business, whether on your township or personal computer, cell phone or device, will be considered to be a public record that is subject to disclosure, and anything that is a private matter, not involving public business, will likely not be considered to be a public record, even if it is in control of the public body or on a township computer or device.

F. What must a Township do to comply with the FOIA?

1. Appoint a FOIA Officer

Section 3.5 requires each public body to designate one or more officials or employees to act as its Freedom of Information ("FOIA") officer or officers.

The FOIA officer has the following functions: (1) receive requests for documents submitted to the township; (2) ensure a timely response by the township; and (3) issue the response to the request. Upon receiving a request, Section 3.5 requires the FOIA officer to (1) note the date the township received the written request; (2) compute the day on which the period for response will expire and make a notation of that date on the written request; (3) maintain an electronic or paper copy of a written

request, including all documents submitted with the request until the request has been complied with or denied; and (4) create a file for the retention of the original request, a copy of the response, a record of written communications with the requester, and a copy of other communications. 5 ILCS 140/3.5(a). It should be noted that one of the PAC binding decisions provides that an actual copy of the documents released per the request *does not* have to be maintained as part of this file. *See* Public Access Opinion No. 10-002 (holding that a public body is not required to make copies of the documents it produces and may not assess fees if such copies are made).

Who should serve as the township's FOIA officer and how many FOIA officers are needed is within the discretion of the township board. Some townships name one FOIA officer with several deputies while other townships appoint various FOIA officers to cover the township's different departments, including the Assessor's Office and Road District. Still others have named multiple FOIA officers that are simply given direction to coordinate among themselves to handle any and all FOIA requests that come in. At the very least, townships should name more than one person to serve as the FOIA officer for situations where a FOIA officer is suddenly not available due to illness, vacation, or departure from the office. Though not strictly required, the use and number of the FOIA officers should be set forth in an overall FOIA policy described below.

All FOIA officers must register with the Illinois Attorney General's Office and receive training from the Attorney General. Any new FOIA officers must be trained within 30 days of appointment and thereafter annually.

FOIA officers may register at www.illinoisattorneygeneral.gov and take online training. The training consists of a series of slides and multiple choice questions. Members of the public or other public officials within the township may also take the training without registering.

2. Provide data about the township

Under Section 4 of the Act, each township must prepare and maintain a brief description of its functional subdivisions of government, the total amount of its operating budget, the number and locations of its separate offices, the approximate total number of full-time and part-time employees, and information regarding the identification and membership of its boards, commissions, committees or advisory councils. The governmental body must also prepare and maintain a brief description of

the methods whereby the public may request information and public records and a directory designating, by title and address, those employees to whom requests for public records should be directed, as well as the fee structure. 5 ILCS 140/4(a), (b). A reasonably current list of all types or categories of records under its control that were prepared or received after July 1, 1984, must also be available. 5 ILCS 140/5.

If your township maintains a website, the above-referenced information must be posted on it. 5 ILCS 140/4.

3. Prepare rules of procedure

Even before a request is made, a township should have in place written rules of procedures regarding FOIA compliance. While a township is not required to have a formal FOIA policy, Section 3(h) provides that each public body may promulgate rules and regulations in conformity with the provisions of the FOIA pertaining to the availability of records and the procedures to be followed.

Each township should consider adopting a policy that outlines how FOIA requests are to be handled. For example, the policy may outline, within the limits of the law, the responsibilities of the FOIA officers, the number and structure of the FOIA officers, how requests are to be made and responded to, the form of the various responses, the fee structure, and the township's general compliance obligations. The policy should also set forth the time periods for producing records (see below for more information on the timeframes for responding).

The FOIA policy should also set forth whether oral requests will be accepted by the township. This format is optional under Section 3(c), and for practical reasons, simple requests should be considered to reduce the paperwork in recording requests. The FOIA policy may provide that all requests may be required to be submitted in writing. However, note that the PAC has ruled a public body must accept FOIA requests by hand delivery at reasonable times and locations and may not implement a rule requiring FOIA requests to be submitted only by mail. *See* Public Access Opinion No. 12-004 (holding that a village president violated the FOIA by refusing to accept a request for records hand delivered to him during a public village board meeting). While townships may require under Section 3(c) that requests be made in writing, townships are prohibited from requiring the request be submitted on a standard form. That said, many townships still offer forms that a person making a request may choose to utilize.

4. Requests for advisory opinions

The FOIA provides that the Attorney General *may* issue advisory opinions to public bodies regarding compliance with the Act. 5 ILCS 140/9.5(h). These requests must be initiated either by the head of the public body (*i.e.* supervisor) or its attorney. In addition, any request must contain "sufficient accurate facts" from which a determination may be made. To date, the Attorney General has not issued any advisory opinions.

5. How much can we charge for copies and in what form do we have to provide records?

The fee structure for providing copies of documents is restrictive. There may be no charge for the first 50 pages (black and white, legal or letter sized) and the cost for pages after the first 50 may not exceed 15 cents per page. 5 ILCS 140/6(b). Note further that the township may not charge for the costs of any search for, compiling, or review of the documents (*i.e.*, staff time, information technology services, etc.) unless the request is for commercial purposes or a voluminous request. 5 ILCS 140/6(a). At least one court has held that the FOIA "does not permit the charging of fees for inspection of an original record." Consequently, a requester is entitled to inspect the original audio tapes of open public meetings, free of charge. *See*, DesPain v. Collinsville, 382 Ill. App. 3d 572 (5th Dist. 2008). Finally, as noted above, a township may not charge for copies of documents made for its internal FOIA file. *See* Public Access Opinion No. 10-002.

Despite the restrictions set forth above, the actual cost of reproduction may be charged for oversize copies (*i.e.*, beyond standard letter- or legal-sized copies). Accordingly, if a copy of a map is requested and the township has to have the map copied at a local copy store at an expense of $10.00, it may pass that cost along. Again, however, the township may not charge for the time incurred in finding the map or taking it to the copy store unless the request was for commercial purposes.

In limited circumstances, public bodies may charge certain fees for the time and costs associated with producing records that were requested for a commercial purpose. 5 ILCS 140/6(f). A public body may now charge up to $10 per hour for time spent by personnel "searching for and retrieving a requested record or examining the record for necessary redactions," although no such fee can be charged for the first eight hours of searching and retrieval. Additionally, a public body may charge a commercial requester for "the actual cost of retrieving and transporting

public records from an off-site storage facility" if the public body has contracted with a third-party storage company. If a public body imposes fees under section 6(f), it must provide the requester with a written accounting of all fees, costs, and personnel hours involved in responding to the commercial request. No fees can be charged for electronic copies of documents under the FOIA – unless the request is a voluminous request – other than for the actual cost of the medium used to provide the documents, such as a CD-ROM or computer memory stick. *See* Sage Info. Servs. v. Humm, 2012 IL App (5th) 110580 (5th Dist. 2012) (holding that the FOIA prohibits additional fees for electronic documents unless another state statute expressly allows such fees for the particular kind of electronic document at issue).

Townships may charge fees for electronic records if the request is a voluminous request. 5 ILCS 140/6(a-5). A voluminous request is a request that (i) includes more than 5 individual requests for more than 5 different categories of records or a combination of individual requests that total requests for more than 5 different categories of records in a period of 20 business days; or (ii) requires the compilation of more than 500 letter- or legal-sized pages of public records unless a single requested record exceeds 500 pages. 5 ILCS 140/2(h). But a voluminous request does not include a request by news media and non-profit, scientific, or academic organizations if the principal purpose of the request is to (1) access and disseminate information concerning news and current or passing events; (2) for articles of opinion or features of interest to the public; or (3) for the purpose of academic, scientific, or public research or education. The fees are based on the megabytes of data and range from $20 to $100. Section 6(a-5) details these fees.

However, documents must be furnished without charge, or at a reduced charge, as determined by the public body if the person requesting the records states the specific purpose for the request and indicates that a waiver or reduction of fees would be in the public interest. A waiver or reduction is in the "public interest" if the primary purpose of the request is to access and disseminate information regarding the health, welfare, safety or legal rights of the general public and is not for the principal purpose of commercial or personal benefit. A presumption exists that any news media request for information regarding health and safety is not for a commercial benefit. 5 ILCS 140/6(c). "News media" is defined by the Act as:

> a newspaper or other periodical issued at regular intervals whether in print or electronic format, a news service whether in print or electronic format, a radio

> station, a television station, a television network, a community antenna television service, or a person or corporation engaged in making news reels or other motion picture news for public showing. 5 ILCS 140/2(f).

In setting the amount of any reduction, the public body may take into consideration the amount of materials requested and the cost of conveying them. 5 ILCS 140/6.

As to the form in which public bodies must provide records, if a record maintained in an electronic format is requested, the public body must furnish it in the format specified by the requester, if feasible. 5 ILCS 140/6(a). Note also that "copying" is defined under Section 2(d) as the reproduction of any public record by means of any photographic, electronic, mechanical or other process, device or means now known or hereafter developed and available to the public body. Accordingly, if the public body has the technological ability to produce records via email, the PAC may require such.

Finally, if a copy of a record is requested, the township must comply and have a copy made. While the township may offer inspection as an alternative, it may not refuse to make the copy. *See* Public Access Opinion No. 10-001. Further, a public body that posts records on its website need not provide copies of those online records in response to a FOIA request. 5 ILCS 140/8/5. Instead, the public body can direct the requester to the website where the record can be "reasonably accessed." But if the requester is unable to access reasonably the record online after being directed to the website, then the requester can resubmit the request to the public body with a statement as to his or her inability to access the record. In that case, the public body is required to make the record available for inspection or copying as otherwise required by FOIA.

G. Which public records or portions thereof are exempt from disclosure?

Two primary sections within the FOIA cover exemptions. First, Section 7 of the FOIA contains a long list of classes and subclasses exempt from inspection and copying. Section 7.5 thereafter sets forth a list of exemptions derived from other Illinois statutes.

As set forth in the preamble, FOIA exemptions are strictly construed and access is favored. Along with Section 2.5, the courts have historically

been consistent in ruling that the burden of showing that a particular exemption applies lies with the public body**.** Wayne Cnty. Press, Inc. v. Isle, 263 Ill. App. 3d 511 (5th Dist. 1994), *citing*, AFSCME v. Cnty. of Cook, 136 Ill. 2d 334 (1994). Among the exemptions and interpretive case law of most interest to township officials are the following:

1. Strict Construction and Conflicting Laws

Section 7(1)(a) of the Act exempts information specifically prohibited from disclosure by federal or state law or rules and regulations implementing federal or state law. Smith v. Cook Cnty. Prob. Dep't., 151 Ill. App. 3d 136 (1st Dist. 1986), illustrates the strict construction generally accorded the Act by the reviewing courts. That court held that a probationer could not seek disclosure of his own probation records under the FOIA because state law specifically prohibited disclosure of such records except by a judge or a probation officer pursuant to court order, making them exempt under Section 7(a) of the Act.

In Kibort v. Westrom, 371 Ill. App. 3d 247 (2d Dist. 2007), the court considered whether or not a citizen request to examine ballots, ballot box tapes, and poll signature cards was authorized by the Freedom of Information Act. The court held that the DuPage County Election Commission was prohibited by the Illinois Election Code from unsealing the requested records for public disclosure under the Act.

Thus, when the FOIA provides no specific exemption prohibiting access by particular individuals to public records, a conflicting law may serve to limit such otherwise unrestricted access.

2. Invasion of Privacy

Some documents in the possession of a township may contain personal information that is not appropriate for public purview. Under the new provisions of the FOIA, this information may be treated either as private information or personal information.

a. Private Information

Section 7(1)(b) exempts "private information" unless disclosure is required by another provision of the FOIA, a state or federal law or a court order. 5 ILCS 140/7(1)(b). Private information is defined as:

> . . . unique identifiers, including a person's social security number, driver's license number, employee

> identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. 5 ILCS 140/2(c-5).

Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person. *Id*.

If information within a document subject to a FOIA request meets the definition of "private information" within Section 2(c-5), the township may redact the information utilizing this exemption. However, the township should still provide a denial to the person making the request that specifies why the exemption applies. For example, if you have a document responsive to a request that contains a home phone number, that phone number should be redacted pursuant to Section 7(1)(b). However, when providing the responsive document, the township must still provide a denial citing Section 7(1)(b) and explaining the basis for the redaction and providing the necessary denial language (see Section N herein). Redaction of "private information" *does not* require pre-approval from the PAC. In PAC Op. 16-012, the PAC found a public body in violation of FOIA for improperly denying a FOIA request for the names and titles of staff members receiving raises and bonuses. The Authority denied the request, claiming the information was protected as private information, that the release would constitute an invasion of privacy, and that the Personnel Records Review Act prohibited disclosure of this information. Not surprisingly, the PAC found the Authority in violation of FOIA. Consistent with past opinions, the PAC noted that records pertaining to a public employee's compensation (i.e., salary and bonuses) is a public record subject to release.

b. Personal Information

Section 7(1)(c) exempts "personal information" contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information. An "unwarranted invasion of personal privacy" means the "disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information." 5 ILCS 140/7(c).

Birth dates are a common example of "personal information." A birth date is not within the definition of "private information" in Section 7(1)(b), and thus public bodies are left to argue it is "personal information" under Section 7(1)(c). Accordingly, if a public body receives a request for a document that contains a birth date, it should redact the birth date as personal information and follow the steps to provide a proper denial. When considering what "personal information" is, it should be noted the disclosure of information that bears on the public duties of public employees and officials *is not* considered an invasion of personal privacy. 5 ILCS 140/7(1)(c). Accordingly, even if the information within a public record may be highly personal and embarrassing, so long as it relates to the public duties of an employee or official, use of this exemption will not be allowed. Accordingly, since the FOIA no longer contains an exemption for information within a personnel file, it is difficult to exempt records just because they are contained in a personnel file. Similarly, the PAC has ruled that police arrest reports are not generally exempt under section 7(1)(c), even though the information was arguably highly personal and embarrassing to the public official who was the suspect named in the arrest report. Public Access Opinion No. 12-006.

3. Quasi-Commercial, Trade, Technical and Financial Items

The exemptions in Sections 7(l)(g), 7(l)(h), 7(l)(i), 7(l)(k), 7(l)(p), 7(l)(r), and 7(l)(t) all relate to quasi-commercial, trade, technical or financial items, including documents pertaining to real estate purchase negotiations. Townships are able to keep from the public certain matters that would prevent them from effectively operating as a buyer or seller or user of services in the marketplace where a trade partner or adversary is not required to make such disclosure. One interesting item that illustrates the parallel relationship between this Act and the Open Meetings Act is the exemption in Section 7(1)(r). That exemption permits a township to withhold from public view "the records, documents and information relating to real estate purchase negotiations until these negotiations have been completed or otherwise terminated." Sections 2(5) and 2(6) of the OMA permit townships to hold closed meetings when the acquisition (and selling price) of real property is being considered. It would do little good if the township could discuss such matters in closed session if the public could then demand and receive any documents utilized in those sessions and maintained in the files of the public body.

4. Communications with the Township Attorney

Section 7(1)(m) exempts from disclosure communications between a "public body and an attorney or auditor representing the public body that would not be subject to discovery in litigation…" This exemption permits attorneys to advise their clients candidly regarding both litigation and non-litigation matters. Clearly, however, not all communications between an attorney and a client are non-discoverable in litigation. Township attorneys will be required, in drafting documents for their clients, to give much more careful thought to the possibility that they will be reading their words on the front page of the local newspaper. In People ex rel. Ulrich, Sr. v. Stukel, 294 Ill. App. 3d 193 (1st Dist. 1997), the University of Illinois refused to turn over to plaintiff certain billing records he requested pertaining to payments made by the university to its attorneys representing it in *Stukel* and another related case. The university asserted the records were exempt as privileged communications between attorney and client. Ultimately, the university waived its privilege and released the records, rendering the issue of the exemption "moot," but plaintiff subsequently claimed he was entitled to attorneys' fees as a prevailing party under the FOIA. The court ruled that the university's attorney fee records were not "confidential communications." Much like client fee documents, these records did not reveal confidences or contain legal advice. Moreover, the fact that they might be non-discoverable in the course of litigation would not be a basis for exemption under the FOIA. This ruling reinforces the underlying public policy of the Act, which promotes disclosure and requires "narrow construction" of exemptions. FOIA was amended in 2010 to permit a court to award "reasonable attorney's fees and costs," with the reasonableness of an award being determined based on the "degree to which the relief obtained relates to the relief sought." This statutory limitation restricts slightly the former statutory goal of broad disclosure and the freedom to challenge a failure to release documents.

Likewise, in Ill. Educ. Ass'n. v. Ill. State Bd. of Educ., 204 Ill. 2d 456 (2003), the Illinois Supreme Court determined that the board failed to establish that its communications with the attorney general were exempt from disclosure pursuant to Section 7(1)(m). In that case, the board provided materials to the attorney general that were later requested by the plaintiff. The supreme court stated that in order to show that material fit within the Section 7(1)(m) exemption, the board would have to show (1) that the attorney general was "representing" it and (2) that the communications would not be subject to discovery in litigation. After an *in camera* review, the court determined that the board failed to meet this burden, stating that treating the terms "attorney-client privilege" and

"legal advice" as some sort of "talisman, the mere utterance of which casts a spell of secrecy over the documents at issue" is not enough. *Id*. Rather, the public body must show some kind of "objective indicia" that the exemption applies. Finally, the court made clear that an *in camera* review was preferred to affidavits in making such a ruling.

Townships often receive requests for their attorney bills. Information within these bills may be subject to attorney-client privilege, including the narrative of services performed. Accordingly, while the township is required to provide copies of attorney bills with the number of hours worked and the final amount due, some information may be exempt under Section 7(1)(m). *See* Public Access Opinion No. 12-005 (holding that invoices for legal services are not exempt under section 7(1)(m), although information may be redacted from the invoice if it contains legal advice, strategy, or information that would not otherwise be discoverable in legal proceedings).

5. Preliminary Materials and Drafts

Section 7(l)(f) exempts "preliminary drafts, notes, recommendations, memoranda and other records" in which opinions are expressed or policies or actions are formulated, except that a specific record or relevant portion thereof shall not be exempt when the record is publicly cited and identified by the head of the public body (township supervisor). Thus, unless the supervisor publicly identifies and cites the preliminary material, it will not need to be made available for inspection. The exemption is intended to protect and permit the free expression of ideas in all sorts of reports prepared at all levels of local government.

Similar to using the "personal information" exemption in Section 7(1)(c), the 2010 amendments to the FOIA required a township to obtain pre-approval from the PAC before it could use the Section 7(1)(f) exemption for preliminary drafts. However, the pre-approval requirement was repealed in August 2011 and is no longer required. It should still be noted, however, that simply referring to a record as a "draft," or a "recommendation" is an insufficient basis to use this exception. Cooper v. Dept. of the Lottery, 266 Ill. App. 3d 1007 (1st Dist. 1994). If a record held out as a preliminary draft is, in fact, part of a final document, it is subject to disclosure. Hoffman v. Ill. Dep't. of Corr., 158 Ill. App. 3d 473 (1st Dist. 1987) (evidence supported determination that information on drugs used in administering death penalty was not exempt, even though affidavits of officials indicated information was preliminary material). For a discussion of the intent and application of the exemption for preliminary

versions of draft documents under the federal FOIA, *see* City of West Chi, v. U.S. Nuclear Regul. Comm'n., 547 F.Supp. 740 (N.D. Ill. 1982).

6. An Overview of Additional Exemptions

Above are exemptions most important to townships. Many other exemptions exist, however, and whenever confronted with a question as to whether disclosure is required, a township should contact its attorney or carefully read the statute for additional options. Further, the FOIA is sometimes amended to include additional exemptions to keep up with changing times. For example, the legislature enacted exemptions found in Sections 7(1)(v) and (x), which exempt policies, plans, and maps designed to identify, prevent, or respond to attacks on the population, facilities, or systems of the public, but only to the extent that such disclosure could reasonably be expected to jeopardize the effectiveness of the measures or the safety of those implementing them.

Section 7(1)(k) exempts technical documents related to construction, including architectural and engineering plans, but also only to the extent that disclosure would compromise security. This provision specifically includes plans for water treatment facilities, airport facilities, sports stadiums, convention centers and any governmentally owned, operated, or occupied buildings.

a. Statutory Exemptions

In addition to the exemptions set forth in Section 7, Section 7.5 sets forth various statutory exemptions. These are exemptions found in statutes other than the FOIA that townships may use to exempt specific information.

b. Releasing Exempted Materials

Except where the right of privacy intervenes, most of the records found to be exempt could be exposed to public view if the township were so inclined. However, Section 2.10 provides that contractors' employees' addresses, telephone numbers, and social security numbers *must* be redacted when providing certified payroll records under the Prevailing Wage Act. Likewise, the Identity Protection Act, 5 ILCS 179/1, *et seq.*, provides strict regulations concerning the release of social security numbers.

It is unclear what action needs to be taken by the corporate authorities to expand the scope of public inspection beyond that contained within the Act since the FOIA makes no provision for a government to release those items covered under its exemptions. Based upon the general philosophy of the Act, however, courts would likely approve most actions to make more, rather than fewer, records available to the public. In most cases, townships should not fear successful lawsuits if they release information under FOIA which might arguably be exempt. This discretionary act should usually be entitled to coverage under the Local Governmental and Governmental Employees Tort Immunity Act. 745 ILCS 10/1-101, *et seq*.

H. What if the request is categorical in nature or is being used as a harassment tool?

For categorical requests, the legislature, recognizing the potential cost and difficulty in answering such requests, has given the public body a means for denial that is separate and distinct from the fact that the request is not for a public record, as defined under Section 2, or exempt under Section 7 or Section 7.5. Accordingly, requests calling for all records falling within a category must be complied with unless compliance with the request would be unduly burdensome for the township and there is no way to narrow the request *and* the burden on the township outweighs the public interest in the information. 5 ILCS 140/3(g). Before invoking such a denial, the township must extend to the person making the request an opportunity to confer with it in an attempt to reduce the request to manageable proportions. *Id*.

Absent a “categorical request,” no process exists simply to deny a FOIA request because it is burdensome to the township or otherwise constitutes harassment. In such situations, the township should consider reaching out to the PAC for guidance or assistance. In some cases, the PAC may attempt to mediate the situation.

I. How are e-mails treated under the FOIA?

As set forth above, the term “public records” now includes as part of its definition “electronic communications.” The question is whether this extends to e-mails from a personal or private account or whether it includes only e-mails on public computers or through public accounts. While some may argue this question is debatable, the PAC’s position on the issue seems clear. In early decisions on requests to review, the PAC explained that e-mails are subject to FOIA even if they are on an official’s

home or personal account or computer. *See* Pre-Authorization Request No. 10-5720. According to the PAC opinion, the key determinant is whether the e-mails relate to public business. This opinion is concerning for at least two reasons: (1) these e-mails are no different than an official sending another trustee a letter in the mail with no mechanism to archive or keep such correspondence; and (2) the public body has no direct control over the e-mails to produce them. Accordingly, every time a public body receives a FOIA request that covers correspondence, the FOIA officer needs to reach out to everyone in the public body to obtain any private correspondence that might exist.

Whether or not the FOIA extends to both public and private e-mail, the Section 7(1)(f) exemption may still apply. Section 7(1)(f) may be used to exempt preliminary drafts and other material where opinions or actions are formulated. Several public bodies have successfully argued that specific e-mails are exempt under this section. For example, in Pre-Authorization Request No. 10-6806, the PAC approved exempting e-mails between village officials that suggested certain policy changes. *See also* Pre-Authorization Request No. 10-7032 (approving withholding e-mails between officials in the governor's office relating to recommendations and opinions); Pre-Authorization Request No. 10-7154 (allowing the attorney general to withhold e-mail correspondence between employees where opinions were expressed as part of an effort to formulate policy). In Pre-Authorization Request No. 10-5611, the PAC approved withholding e-mail correspondence between the mayor and alderman regarding their opinions on the appointment of an official. In Pre-Authorization Request No. 10-6896, the PAC also approved withholding personal e-mails between state's attorneys that did not relate to public business. However, the PAC has also ruled that text messages sent between city council members on their personal cell phones qualify as "public records" and are subject to FOIA disclosure when those messages are related to public business. Public Access Opinion No. 11-006. At the very least, townships, their employees and officials should be aware that e-mails and text messages may be subject to disclosure, even on their home computers or personal cell phones. Whether or not something is a public record that is discloseable will hinge on the public nature of its content, not on the ownership of the device on which it is located.

J. What if the request is for a commercial purpose?

If the request is for a commercial purpose, the timeframe for responding to the request is extended to 21 days. Within this 21 days, the public body must either (1) provide to the requester an estimate of the

time required to provide the records requested and the estimated cost for same; (2) deny the request pursuant to an applicable exemption; (3) notify the requester that the request is unduly burdensome and notify the requester that the request should be narrowed; or (4) provide the records. 5 ILCS 140/3.1. Clearly, the request may be answered in some reasonable time period beyond the 21-day reporting period. The Act defines "commercial purpose" as the use of "any part of a public record or records or information derived from public records, in any form for sale, resale, or solicitation or advertisement for sales or services." 5 ILCS 140/2(c-10).

It should be noted that requests made by news media and non-profit, scientific, or academic organizations are not considered to be for a commercial purpose when the purpose of the request is (1) to access and disseminate information concerning news and current or passing events; (2) for articles of opinion or features of interest to the public; or (3) for the purpose of academic, scientific or public research or education. *Id*. Certain fees may also be assessed for commercial requests as discussed in section F.5. of this chapter.

K. If a township provides its records to another public body, does it waive the right to protect those records from disclosure under the FOIA?

This question was addressed in Twin-Cities Broad. Corp. v. Reynard, 277 Ill.App.3d 777 (4th Dist. 1996), where Illinois State University submitted copies of minutes and a transcript of a closed meeting to the state's attorney as part of an investigation into whether the university's athletic council had violated the Open Meetings Act by holding a closed session in which certain athletic programs were terminated. Thereafter, a newspaper requested those documents from the state's attorney's office, prompting ISU to seek to enjoin the state's attorney from releasing the documents to the newspaper. Distinguishing the Illinois FOIA from its federal counterpart, the court found that the state statute grants a public body a continuing right to assert exemptions for requested records even when those records are in the possession of another entity. Whether this interpretation will continue under the recent revisions to the Act remains to be seen.

L. What is the timeframe for responding to FOIA requests?

Generally, the time to respond to a FOIA request is five business days. 5 ILCS 140/3(d). Failure to respond or otherwise extend the response time as discussed next is considered a denial of the request. *Id*.

The PAC has already issued binding opinions against several public bodies that failed to respond to FOIA requests within five business days. *See*, for example, Public Access Opinions Nos. 12-002, 13-001, 13-004,13-005 and 16-011. However, there are easy ways to avoid being the subject of adverse PAC opinions, even when a township finds responding to a FOIA request within the mandatory timeframe difficult or impossible.

If the initial five-day timeframe is not enough time, an additional five days may be taken under Section 3(e). Section 3(e) allows the public body to extend the time for responding for another five-day period from the original due date for any of seven specified reasons (*i.e.*, requester seeks collection of a substantial number of records; the records need to be reviewed, etc.). Note, however, the substantial consequences if an extension is utilized and the public body fails to respond within that extended timeframe. First, the failure to respond is treated as a denial of the request. This result allows a requester to either file for injunctive or declaratory relief or get the PAC involved. The public body also loses the right to claim the request is unduly burdensome and to charge fees for reproduction of records if it does not timely respond to a FOIA request. 5 ILCS 140/3(f).

M. What if we cannot respond within the statutory timeframes?

At times a request is so large that responding within the total ten-day time period set forth above is impractical. In this situation, where a public body needs additional time beyond the first five days and the five-day extension set forth in Section 3(e), the Act allows the public body and the requester to set a new date for compliance if both parties can agree in writing. 5 ICLS 140/3(e). Accordingly, the public body should contact the requester, explain the reasons for the expected delay, and try to work out an agreed- upon extension date. A simple letter signed by both parties stating the new extension date is likely sufficient to comply with the Act.

Moreover, in December 2014 the General Assembly added Section 3.6, which details the response timeframe for voluminous requests. 5 ILCS 140/3.6. Under Section 3.6 a public body must send a response within 5 days after receipt of the voluminous request. This response must explain that the request will be treated as voluminous and that the requester must respond within 10 days stating whether they would like to amend the request. The public body's response must also notify the requester that the public body may request an additional 10 days to comply, that the requester has a right to review by the PAC, and that even if the requester fails to accept or collect the records they may be charged

fees, as set out in Section 6. If the request continues to be a voluminous request, the public body shall provide an estimate of the fees to be charged, which it may require the person to pay in full before copying the documents; deny the request pursuant to an exemption; notify the requester that the request is unduly burdensome; or provide the records. Section 3.6 also allows the public body and the requester to agree, in writing, to extend the time for compliance.

N. How are denials handled?

Denials are now handled directly by the duly appointed FOIA officer. The denial must be in writing and it must include a "detailed factual basis for the application of any exemption claimed." Since appeals are no longer made to the head of the public body, the letter must provide notice of the requester's right to seek review of the denial by the PAC along with the PAC's address and phone number. Each denial letter must also inform the requester of his or her right to seek judicial review under Section 11 of the Act. *See* 5 ILCS 140/9(a). If the denial utilizes an exemption under Section 7, the notice of denial must specify the exemption claimed and the "specific reasons for the denial, including a detailed factual basis and a citation to supporting legal authority." 5 ILCS 140/9(b).

O. If a Township refuses to allow access, what are the rights of the requestor?

After the applicant has been denied access to the records by the FOIA officer, the applicant has two options: (1) file a request for review with the PAC; or (2) file for review with the circuit court in the county where the township's primary offices are located.

1. PAC Requests for Review

If a public body denies a request for a document or otherwise fails to timely respond to a FOIA request, the person making the request may ask the PAC to review the denial. *See* 5 ILCS 140/9.5. The request for review must be filed within 60 days after the date of the final denial and must (1) be in writing: (2) be signed by the requester; and (3) include a copy of the original request for records and any and all responses. 5 ILCS 140/9.5(a).

Upon receipt of a request for review, the PAC first determines whether further review is warranted. This determination must be made within seven working days. If the PAC determines the alleged violation is unfounded, it shall so advise the requester and the public body, and no further action shall be undertaken. 5 ILCS 140/9.5(c). If the PAC

determines a review is appropriate, the PAC will forward a copy of the request for review to the public body within seven working days after receipt and shall specify the records or other documents necessary to be provided to the PAC for the review. *Id*. Within seven working days of receiving the request for review from the PAC, the public body may, but is not required to, answer the review. This is essentially a legal brief that sets forth the basis and reasoning of the public body's denial and must be filed within seven working days of receiving a copy of the request for review. If the public body does answer, the person making the request may also file a response within seven working days of the answer being filed. If the public body does not answer, does not supply the PAC with the records it requested, or otherwise fails to participate in the review process, the PAC likely will enter a binding opinion against the public body. *See* Public Access Opinion No. 12-007 (holding that a public body's refusal to provide copies of records requested by the PAC in relation to a complaint for review is a violation of section 9.5(c) of the FOIA).

Unless the PAC decides to address the matter in another way, Section 9.5(f) provides that the PAC must examine the issues and records and make findings of fact and conclusions of law and issue a binding decision on same within 60 days after a review is initiated. Presumably, this timeframe means 60 days after receipt of the initial request for review. Note that the PAC may extend the time by no more than 30 business days by sending written notice to the requester and public body detailing the reasons for the extension. As noted, the PAC could also decide to address the matter without issuance of a binding opinion. 5 ICLS 140/9.5(h).

If the PAC issues a binding decision, either party may appeal the decision under the Administrative Review Law. 5 ILCS 140/11.5. Such an appeal must be initiated within 35 days (per the Administrative Review Law, 735 ILCS 5-3-103) of the final decision and is appealed to the circuit courts in either Cook County or Sangamon County. 5 ILCS 140/11.5. For additional PAC analysis of noncompliance with binding opinions, see 5 ILCS 140/11.6, effective 1/1/17.

2. Appeal of Denial Directly to Circuit Court

In the alternative to seeking relief from the PAC, a person whose FOIA request was denied may appeal directly to the circuit court of the county where the township's main offices are located. 5 ILCS 140/11.

The circuit court has jurisdiction to enjoin public bodies from withholding public records and to order the production of any public

records improperly withheld. 5 ILCS 140/11(d). If the public body can show that exceptional circumstances exist and that it is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the public body additional time to complete its review of the records. *Id*.

If a person seeking the right to inspect or receive a copy of the public record prevails in a proceeding under court review, the court *must* award reasonable attorneys' fees and costs to the successful litigant. In determining what amount of attorneys' fees is reasonable, the court may consider the degree to which the relief obtained relates to the relief sought. 5 ILCS 140/11(i). Also, if the court determines the public body willfully and intentionally failed to comply with the Act or otherwise acted in bad faith, the court is required to impose a civil penalty against the public body in an amount not less than $2,500 nor more than $5,000 for each occurrence. 5 ILCS 140/11(j). Note that if a public official or employee refuses to produce a record ordered by the court, he or she may be held in contempt. 5 ILCS 140/11(g).

P. What research tools are available to interpret the act?

The Illinois Attorney General's website contains not only the online training, but other guides and handouts with helpful information on the FOIA. The binding decisions of the PAC are published on this website along with various other PAC materials. The attorney general's website is www.illinoisattorneygeneral.com. Ancel Glink also offers helpful FOIA publications on its website at www.ancelglink.com.

Q. What is the guidance on the retention and destruction of public records?

The process for the retention and destruction of records is contained in the Local Records Act. 50 ILCS 205/1, *et seq*. Illinois law provides for the destruction of public records only upon the authorization of the State Archivist, whose office functions under the Secretary of State and may be reached at (217) 782-4682. The Office of State Archivist has not developed any specific list or schedule for the destruction of records. Instead, its rules require that any public official desiring to destroy records invite a representative of the archivist (which in some cases is an employee of a Local Records Commission) to view the records of the public body. The archivist will then give the public body a schedule which it may follow. Apparently, the reason for this "personal approach" is that the Office of State Archivist is interested in the retention of historical

records, and that office will, usually quite promptly, provide the general rules regarding this process.

R. What is the bottom line?

The Freedom of Information Act exemptions promote important public interests in protecting individuals' personal privacy and the security and confidentiality of certain governmental records and proceedings. If a requested record falls within one of the Act's exemptions, townships should deny the request or redact the protected information. Nonetheless, the process of determining whether an exemption applies should not be harrowing. If it is unclear, err on the side of disclosure. If you believe that information should not be disclosed but are unsure whether an exemption applies, contact the township attorney. He or she will be able to make an educated decision, based upon prior case law and PAC opinions, as to whether disclosure is proper. Interpretations of the new FOIA provisions are developing constantly as the attorney general's office issues decisions after requests for review. Due to the quickly changing landscape, contact your township attorney when questions arise so he or she can review and advise the township on the latest FOIA developments.

S. Additional website posting requirements under the Local Records Act

In addition to the requirements specified above regarding the information that the Freedom of Information Act requires certain townships to post on their websites, the Local Records Act requires that townships that maintain an Internet website other than a social media website or a social networking website shall post to their websites a mechanism, such as a uniform single e-mail address, for members of the public to communicate electronically with township officials, unless such officials have an individual e-mail address for that purpose. A hyperlink to this information must be easily accessible from the township's home page. This requirement is in addition to any other posting requirements required by law or ordinance. 50 ILCS 205/20.

V. OPEN MEETINGS ACT

Most of the technical rules governing township board meetings derive from the Open Meetings Act. The Open Meetings Act ("OMA"), along with the Illinois Freedom of Information Act ("FOIA"), comprise the "Sunshine Laws," which are designed to permit the public to have greater insight into governmental operations. The OMA addresses topics such as providing notice of regular and special meetings, meeting minutes, agendas, and other related topics. The purpose of this chapter is to discuss open-meetings rules as related to township board meetings.

A. Types of Township Board Meetings

Township board meetings may be (1) regular (occurring on established specific dates); (2) special (called occasionally for special purposes); or (3) emergency (called for an emergency purpose, such as when the township hall has just been eradicated by a tornado). Meetings are also characterized as "open" meetings when they are open to the public to attend or "closed" meetings (or "executive sessions") when a portion of a meeting is permitted to be conducted outside of the presence of the public for an express reason permitted by the OMA, as discussed below. Annual meetings of electors are also considered to be a meeting.

B. What is a "*Meeting*"?

Under the Open Meetings Act, a "meeting" of a five-member body like a township board is any gathering of a *quorum* of the members of the public body held for the purpose of discussing public business. A "quorum" means a majority (more than half) of the voting members of the public body, such that a five-member township board reaches a quorum with as few as three of the voting members. A "meeting" is a meeting whether conducted in person, by video or audio conference, telephone call, electronic means (including e-mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication. 5 ILCS 120/1.02. The general rule for public bodies other than five-member boards is that any gathering of a *majority of a quorum* will constitute a "meeting" if held for the purpose of discussing public business. *Id.* For example, a nine-member village board comprised of eight trustees and the mayor reaches a quorum when five or more members are present, but it reaches a *majority of a quorum* and triggers the OMA requirements with as few as three members present.

Because the definition of "meeting" includes communication through remote telephonic or electronic media, including any means of

"contemporaneous interactive communication," township officials should be aware that e-mails and text messages sent contemporaneously between a sufficient number officials could constitute a public meeting under the OMA, even when those messages are sent from the officials' personal cell phones, from personal home computers, or from personal e-mail accounts. *See* Public Access Opinion No. 11-006 (holding that text messages sent contemporaneously between aldermen discussing public business are not exempt from public disclosure under the FOIA).

1. Committee Meetings

The term "public body" includes all subsidiary bodies of townships, including committees, so the provisions of the OMA regarding notice, agendas, etc., also apply to committees. 5 ILCS 120/1.02. The Public Access Counselor has ruled that it violates the OMA for a public body to take action on a matter referred to it by a committee earlier in the day since the agenda for the public body's regular meeting contained no mention of the specific action to be taken based on the results of the earlier committee meeting. *See* Public Access Opinion No. 13-002.

2. Special Rules for Five-Member Boards

Prior to 2008, Section 1.02 of the OMA defined "meeting" to include a majority of a quorum of a five-member board (2 people), instead of a quorum (3 people). This limitation had long frustrated township officials who were unable to discuss even the simplest items related to public business without technically conducting a "meeting" under the Act. Now, two township officials may meet to discuss public business without it being considered a "meeting" under the OMA. Although this law has liberated township officials from the "majority of a quorum requirement" for five-member bodies, it contains an additional limitation. The amendment to the OMA also requires an affirmative vote of at least three members of a five-member body to adopt any motion, resolution, or ordinance, unless a greater number is otherwise required, regardless of whether all members are in attendance. 5 ILCS 120/1.02. This rule also applies to committees and all other public bodies with five members.

C. Electronic Participation in Meetings

A quorum of the corporate authorities must be physically present at the location of an open meeting. 5 ILCS 120/2.01. If a quorum of a public body is physically present at the meeting, a majority of the public body may allow a member to attend the meeting by video or audio conference if

the absent member is unable to physically attend for one of the following reasons: (i) personal illness or disability, (ii) employment purposes or the business of the public body, or (iii) a family or other emergency. 5 ILCS 120/7(a). An absence caused by a vacation does not qualify for a request to participate electronically. If a member wishes to attend a meeting by video or audio conference, he or she must notify the recording secretary or clerk of the public body before the meeting unless advance notice is impractical. 5 ILCS 120/7(b). A township may not invoke remote participation unless it has previously adopted an ordinance or rule allowing for remote participation. 5 ILCS 120/7(c).

If a township has adopted such an ordinance or rule, a majority of the board may allow a member to attend a meeting via video or audio conference only if such attendance fully complies with the rules of the public body. These rules must conform to OMA requirements and may further limit the ability of members to attend meetings by means other than physical presence. The public body's rules may also require more notice than is required by the Act. 5 ILCS 120/7(c). We recommend that townships work with their attorneys to draft a remote attendance policy that satisfies the requirements of the OMA and fulfills the township's needs.

D. Time and Place of Meetings/Meetings on Holidays

All public meetings must be held at specified times and places that are convenient to the public. 5 ILCS 120/2.01. Meetings that start at a reasonable time may run late without violating the Open Meetings Act. In re Foxfield Subdivision, 396 Ill. App. 3d 989 (2d Dist. 2009). No public meetings shall be held on legal holidays unless the regular meeting day falls on that holiday. 5 ILCS 120/2.01. A special meeting may be held on a holiday if the regular meeting date was to be on a legal holiday but was canceled and a special meeting later noticed for the same holiday date. *See* Argo High Sch. Council v. Argo Cmty. High Sch. Dist. 217, 163 Ill. App. 3d 578 (1st Dist. 1987). Meetings should be held only in places that are customarily open and accessible to the public. *See* Public Access Opinion 12-008 (holding that a public meeting held in the home of the president of a school district violated the OMA even though proper notices and agendas were posted and the front door to the home was left open during the meeting).

E. Notice of Public Meetings

Townships must give public notice of all meetings, whether open or closed to the public. 5 ILCS 120/2.02. The notice requirements in the Open Meetings Act are in addition to – rather than substituting for – any other notice requirements established by law. 5 ILCS 120/2.04.

1. Notice of Annual Schedule of Regular Meetings

A township must give public notice of its annual schedule of regular meetings at the beginning of each calendar or fiscal year, listing the dates, times and places of such meetings. 5 ILCS 120/2.02(a). This annual notice must include the meetings of committees or subcommittees of the board, as well as meetings of any formally created advisory groups. 5 ILCS 120/2.02.

The annual notice must be posted in the principal office of the township or, if no such office exists, at the building in which the meeting is held. 5 ILCS 120/2.02(b). The annual notice, as well as changes in the schedule of regular meetings, must also be sent to any news medium that has filed an annual request for such notice and must be posted on the township website if the website is maintained by full-time staff. 5 ILCS 120/2.02, 2.03. The notice does not have to be visible outside a township office after office hours, as long as it is posted in a proper location on time. In re Foxfield Subdivision, 396 Ill. App. 3d 989 (2d Dist. 2009).

2. Notice of Township Board Meetings

A township must give public notice of any regular meeting at least 48 hours before such meeting, and the notice must include the agenda by posting the notice and agenda at the township's principal office and at the building in which the meeting is to be held. 5 ILCS 120/2.02(b).

3. Notice Procedures for Special, Emergency, Reconvened or Rescheduled Meetings

a. Notice of Special Meetings

Upon the request of the supervisor or any two board members, the township clerk must call a special township board meeting at the time requested and must give the board members at least 48 hours notice of the meeting. 60 ILCS 1/80-10(b). Public notice of a special meeting, except an emergency meeting, along with an agenda for the meeting must be given at least 48 hours before the meeting by posting of the notice and

agenda at the principal office of the governmental body and the meeting location and by furnishing the notice and agenda to the registered news media. If the township maintains a website, the notice must also be posted on the website. 5 ILCS 120/2.02. Different rules apply to notices of special meetings of electors. See the chapter on Annual Town Meetings regarding those requirements.

Unlike regular meetings, special meetings require specific notice of topics to be discussed (whereas any matter may be discussed, although not acted on, at a regular meeting). Special meetings may be called for any legal purpose, but the notice must be issued and served on behalf of the township by an official (usually the clerk) sufficiently in advance of the meeting as the ordinance and statutes provide. The notice of a special meeting must state the purposes for which the special meeting is called. No business may be transacted at the special meeting except that for which it is called, as set out in the notice, in part because the Open Meetings Act protects the rights of the press and the public to be notified of the business of the township. Even if all members of the legislative body waive notice of the particular matter to be discussed, the intervening rights of the public and the press to such notice probably may not be waived. Ward v. Du Quoin, 173 Ill. App. 515 (4th Dist. 1912).

Placing as the last item of business at a special meeting the phrase "other business" will not suffice. That phrase gives the press or public no notice of the specific matter that will be discussed.

b. Notice of Reconvened Meetings

If a meeting was commenced and is to reconvene, a township does not have to give notice of a reconvened meeting if the original meeting was open to the public and (1) it is to be reconvened within 24 hours, or (2) an announcement of the time and place of the reconvened meeting was made at the original meeting and there is no change in the agenda. 5 ILCS 120/2.02(a).

c. Notice of Emergency Meetings

If a "bona fide" emergency situation requires the calling of an emergency meeting, a township must give notice of the emergency meeting as soon as practicable. Prior to holding an emergency meeting, a township must give notice to any news medium that has filed an annual request for notice under the Open Meetings Act. An agenda must

accompany the notice. Notice of the emergency meeting must also be posted at the principal office of the governmental body. 5 ILCS 120/2.02.

d. Notice of Rescheduled Meetings

Public notice of a rescheduled regular meeting, along with an agenda for the meeting, must be given at least 48 hours before the meeting by posting the notice at the principal office of the governmental body and the meeting location and by furnishing the notice and agenda to the registered news media. 5 ILCS 120/2.02.

4. Notice of a Changed Meeting Schedule

If a township changes one regular meeting date, see "Notice of Rescheduled Meetings" above. However, if a township or committee changes all of its regular meeting dates, for example, from the second Tuesday of each month to the second Thursday of each month, the township must publish notice of the change in a newspaper of general circulation in the area at least 10 days prior to the date such change takes effect. In such instance, the township must also post a notice, at least 10 days in advance, in the township's principal office or, if no such office exists, at the building in which the meetings are to be held. A copy of the notice must also be sent to all registered news media. In the case of a local governmental unit with a population of less than 500 in which no newspaper is published, this notice may be posted in at least three prominent places within the governmental unit. 5 ILCS 120/2.03.

5. Distribution of Notices to Media

As discussed in the various sections above, a township must supply copies of the notice of its regular meetings schedule and of the notice of any special, emergency, rescheduled, or reconvened meetings to any news outlet (known as "registered news medium") that has filed an annual request for such notice. 5 ILCS 120/2.02(b). In addition, any registered news medium that has given the public body an address or telephone number within the public body's jurisdiction must be given notice of all special, emergency, rescheduled, or reconvened meetings in the same manner as such notice is given to members of the governing body. When notice of the meeting is delivered to the homes of the members of the governing body, notice must also be delivered to the address of each registered news medium within the jurisdiction. In every case but emergency meetings, the registered news media must be sent an agenda of the meeting. 5 ILCS 120/2.02. If a governmental body properly sends

notice to the registered news media but it is not received, the actions of the governmental body may not be invalidated. 5 ILCS 120/2.04. Many news media fail to make the required annual request. However, townships should generally try to notify local news media even if the media have been delinquent in following the technical rules for becoming a "registered news medium."

6. Requirement to Post Notices and Agendas on Website

A township with a website maintained by its full-time staff must post notices and agendas for its regular meetings on its website, even if website maintenance is only a part-time function of the full-time staff. 5 ILCS 120/2.02. If a township does not have full-time staff maintaining the website, this requirement does not apply. Regular meeting notices and agendas posted on the public website must remain posted until the regular meeting is concluded. *Id.* In addition to posting the notices and agendas for each regular meeting, such townships must also post the annual schedule of meetings on the website, which must remain there until a new public notice of the schedule of regular meetings is approved. *Id.* Such townships should also post notices and agendas of special, reconvened, and rescheduled meetings on the website until such meeting has concluded. If practical, the same is true for emergency meetings. The failure of a public body to post on its website notice of any meeting or the agenda of any meeting shall not invalidate any meeting or any actions taken at a meeting. *Id.*

(As discussed below, townships with full-time staff maintaining their websites must post regular meeting minutes on the website within 10 days after they are approved. These minutes must remain posted on the website for at least 60 days after their initial posting. 5 ILCS 120/2.06.)

F. Agendas

Because notices and agendas are often combined, refer to the Notices sections above for posting requirements. While certain statutory provisions may only require posting at the principal office (and not at the meeting location), to be safe we generally recommend that notices and agendas be posted at both the principal township office and the actual meeting location. See 5 ILCS 120/2.02(a). The requirement of a regular meeting agenda shall not preclude the consideration of (but not action on) items not specifically set forth in the agenda. However, for special meetings, only matters listed on the agenda may be discussed. The PAC has ruled that it violates the OMA for a public body to take action on a

matter referred to it by a committee earlier in the day, when the agenda for the public body's regular meeting contained no mention of the specific action to be taken based on the results of the earlier committee meeting. *See* Public Access Opinion No. 13-002.

It is therefore important that the agenda, furnished along with a meeting notice, be as complete as possible. The agenda should list special items and topics to be discussed and acted upon at the meeting. At a regular meeting, the board is free to consider any matter that may legally come before it, but it may not act on a matter that is not on its agenda. Rice v. Adams Cnty., 326 Ill. App. 3d 1120 (4th Dist. 2002). The courts have also permitted a governmental body to consider any specific matter that is closely related to a general topic listed on an agenda or notice. Argo High Sch. Council v. Argo Cmty. High Sch. Dist. 217, 163 Ill. App. 3d 578 (1st Dist. 1987); In re Foxfield Subdivision, 396 Ill. App. 3d 989 (2d Dist. 2009).

The Act does not appear to require an agenda for emergency meetings. It would be a good policy, however, to prepare agendas for such meetings, especially if action is expected to be taken.

G. Recording Meetings

Any person may record the proceedings of a public meeting by tape, film, or other means. The governmental body holding the meeting may prescribe reasonable rules to govern such recordings, but the right to record the meeting may not be eliminated by local rules. These rules should be written and duly adopted by the governmental body. 5 ILCS 120/2.05; ILL. ATT'Y. GEN. OP. NO. S-867 (1975). In an informal opinion issued in 2000, the Illinois Attorney General's office analyzed a municipality's procedural rules for recording meetings and found most of them unreasonable because they hindered or thwarted the "ability of a person to exercise the right to record a public meeting without an obvious concomitant benefit to the public body." ILL. ATT'Y GEN. OP. I-00-015. The attorney general's Public Access Counselor, who has powers of oversight and enforcement of the FOIA and OMA, has ruled that a public body may not require people to provide advance notice to the public body when they plan on recording one of its public meetings. Public Access Opinion NO. 12-010. However, the right to record may be suspended in certain proceedings involving witnesses, so check those rules if such a situation arises. 5 ILCS 120/2.05.

H. Meeting Minutes

The courts have said that a corporate body speaks through its records. Nat'l. Bank of Decatur v. Bd. of Educ. of Decatur Sch. Dist., 205 Ill. App. 57 (3d Dist. 1917). Therefore, the records of the township board must be complete, truthful and legal. The corporate records of a township must serve, both contemporaneously and for the future, as a source of information for the board itself, the public, and parties with vested rights.

1. Who Takes the Minutes?

The clerk typically attends all meetings of the corporate authorities, including executive sessions, and keeps the minutes, unless the clerk is the subject matter of the meeting and his or her presence creates a conflict of interest. Any appropriate person may take minutes of committee meetings.

2. Content of Minutes

Section 2.06 of the Open Meetings Act requires townships and their committees to keep written minutes of all their open and closed meetings. The minutes of the meeting must include (1) the date, time and place of the meeting; (2) the members of the public body recorded as either present or absent and whether the members were physically present or present by means of video or audio conference; and (3) a summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken. 5 ILCS 120/2.06(a).

The minutes should generally consist of a record of what took place and nothing else. Speeches, discussions, or statements should not be copied into the minutes, except when the board rules provide for statements explaining votes, when the board may so order in exceptional cases, or when such information is necessary to understand what took place at the meeting. Full texts of communications, reports, etc., should not be included except in unusual instances when the board instructs the clerk to include them. Although the minutes should be kept as brief as possible, the clerk must always keep in mind that matters discussed by the board should not be recorded in the minutes in a shorthand manner. Notations such as "board discussed Johnson property" or "board discussed Mr. Baker's bill" should be avoided. If the matter is of sufficient importance to be included in the minutes, the location of the "property" or the reason for the "bill" should be set out in full.

The minutes should be prepared so that someone reading them 10 years after the meeting would understand the substance of the matters

discussed and the action taken on them. Motions should be included in full. Other items, such as ordinances, should appear with their full descriptive titles. The minutes, also known as a "journal," should also show all votes and roll calls. The minutes should not be a verbatim account of everything said during the meetings but should only provide an adequate record of official action. The corporate authorities have the legal right to cause more detailed minutes to be prepared and approved should they require them. The journal should carefully specify the date and place of meeting. The use of proper terminology is an important factor in the clarity of the minutes. All minutes are "approved," not "accepted." Motions are to "pass" ordinances, not to "adopt" or "approve" them. The supervisor "approves" ordinances by signing them. Expenditures are "authorized." Voting is accomplished by "voice vote" or "roll call vote." The failure to record roll call votes in minutes, when such votes are required for passage of matters in a meeting, may lead to an otherwise properly taken action being declared void by a court. *See* Vill. of Mettawa v. Carruthers, 175 Ill. App. 3d 772 (2d Dist. 1988).

3. Approval of Open Meeting Minutes; Posting on Websites

Open meeting minutes must be approved within 30 days after that meeting or at the public body's second subsequent regular meeting, whichever is later. 5 ILCS 120/2.06(b). Open meeting minutes must be made available for public inspection within 10 days after the minutes are approved by the governing body. A township with a full-time staff maintaining its website must post its regular meeting minutes on the website within 10 days after they are approved. They must remain posted on the website for at least 60 days after their initial posting.

4. Closed Session Minutes

Public bodies must also keep minutes of their closed meetings. Public bodies should review closed session minutes relatively quickly in a subsequent closed session to determine whether their content is accurate, while people still remember what occurred at the initial closed meeting. The Open Meetings Act does not specify a timeline within which closed session minutes must be approved for content or for release to the public, although recently the Illinois General Assembly passed P.A. 102-0653 amends the Open Meetings Act to require public bodies to review their closed session meeting minutes every six months, or as soon as practicable, taking into account the nature and meeting schedule of the public body. At meetings where closed session minutes are

being reviewed, the board must make a determination: (1) that the need for confidentiality still exists as to all or part of those minutes or (2) that the minutes or portions thereof no longer require confidential treatment and are available for public inspection. The board must report its determination in open session. 5 ILCS 120/2.06(d).

A township's failure to comply strictly with this semi-annual review of minutes does not make the minutes open to the public or available in judicial proceedings (except proceedings to enforce the Open Meetings Act) provided that the township conducts a review within 60 days of the discovery of its failure and reports in an open meeting whether keeping the minutes in confidence remains necessary. *Id.*

The discussion of which minutes should be released may be discussed in closed session. Many communities use an ordinance or resolution to establish a more permanent record of the action.

5. Closed Session Recordings

In addition to keeping minutes of closed sessions, a township must keep a verbatim record of all closed meetings in the form of an audio or video recording. 5 ILCS 120/2.06. The township must keep the tapes of the closed session for at least 18 months. After 18 months, the township may destroy the recordings of the closed session without notification to or the approval of a records commission or the state archivist under the Local Records Act or the State Records Act if (1) the governing board approves the destruction of a particular recording; (2) the public body approved appropriate written minutes of the closed meeting; and (3) if no court order or investigation warrant the preservation of the recordings. Once the minutes of a closed session are approved and 18 months have passed, the tape of the meeting may be erased, even if the minutes have not been made public.

If the public body has not yet released the recording, the closed session recording is not subject to disclosure under the Freedom of Information Act, nor it is open for public inspection or subject to discovery in legal proceedings (except one brought to enforce the Open Meetings Act). A court may seek to review it, however, if a lawsuit is brought to enforce the OMA. In the case of a criminal proceeding, the court may conduct an examination in order to determine what portions, if any, must be made available to the parties for use as evidence in the prosecution. 5 ILCS 120/2.06.

I. The Public's Right to Speak at Meetings

Section 2.06(g) of the OMA involves the public's right to speak during governmental meetings. This section states, "Any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." 5 ILCS 120/2.06(g). All public bodies therefore must develop a procedural rule that allows the public to address the public body. While this amendment permits the public to have an opportunity to address public officials, it does not require the public officials to engage in a debate, to make themselves available for abusive or harassing behavior by a member of the public, or to provide on-the-spot answers to members of the public on the topics that are raised by the public.

Since this law applies to the meetings of all public bodies, including committees and subsidiary organizations, the responsibility to establish "rules" regarding public comment applies to all such units of government. A township should adopt a single rule applicable to all sub-units of the government. While the right to speak during a public meeting cannot be completely eliminated by local rules, reasonable restrictions on the length of time for each speaker and other reasonable limitations applied equally to all people are permitted. Furthermore, people who engage in disruptive or violent behavior may be removed from public meetings.

J. Closing Meetings to the Public

While the public policy undergirding the Open Meetings Act is to increase governmental transparency through the conduct of open meetings, there are several statutory exceptions permitting public bodies to conduct meetings that are closed to the public in certain, narrow circumstances. Even so, given the Act's purposes, the exceptions are strictly construed. 5 ILCS 120/2(b). Meetings or portions of meetings may be closed only under the circumstances expressly stated in the OMA. A public body may hold a meeting closed to the public only if:

1. The subject to be discussed at that meeting is one of the enumerated exceptions listed in Section 2(c) of the Act, 5 ILCS 120/2(c) (see Section entitled "Exceptions Allowing Closed Meetings," below, for a list of exceptions pertaining to townships); and

2. A majority of a quorum at a meeting open to the public has voted to have such a closed meeting, 5 ILCS 120/2a; and

3. Proper notice was given for the meeting at which the vote was taken, 5 ILCS 120/2a, 2.02, 2.03. and

4. The vote of each member on the question of holding the meeting closed is recorded and entered in the minutes of the open meeting, 5 ILCS 120/2a, 2.06(a)(3); and

5. The motion to hold the closed session and the minutes of the meeting contain a citation to the specific exception which authorizes the closing of the meeting to the public, 5 ILCS 120/2a (but see Henry v. Anderson, 356 Ill. App. 3d 952 (4th Dist. 2005), in which the court ruled that a board's citation to subject matter constituting a statutory exception sufficed and the closed meeting was therefore not illegal merely because the board failed to cite the specific, numerical statutory citation; and Wyman v. Schweighart, 385 Ill. App. 3d 1099 (4th Dist. 2008), which clarified that if the subject matter is pending litigation, stating "pending litigation" suffices, but if the lawsuit at issue has not been filed, then the public body must specify that the litigation is imminent and provide the reasons for such a finding); and

6. The closed session must be recorded in its entirety through a verbatim audio or video recording, and such tape must be maintained for at least 18 months following the closed session as discussed above, 5 ILCS 120/2.06(a) and (c).

If a township board complies with the above procedures and the subject matter to be discussed at the closed meeting is a permissible basis for a closed meeting, then the body may legally hold a closed meeting. Of course, only those topics specified in the motion to go into a closed meeting may be discussed at the closed session. 5 ILCS 120/2a. Closed sessions authorized by a proper vote may take place as part of a properly noticed regular, special, or emergency meeting open to the public without the need for any further notice or an indication in the agenda that a closed session will be held during the course of the meeting. *Id*. After all, in some cases the need for the closed session may not become apparent until during a meeting.

As a general rule, tapes of closed session minutes are not subject to public inspection. However, access to verbatim recordings shall be provided to duly elected officials or appointed officials filling a vacancy of an elected office in a public body, and access shall be granted in the public body's main office or official storage location in the presence of a

records secretary, an administrative official of the public body, or any elected official of the public body. No verbatim recordings shall be recorded or removed from the public body's main office or official storage location, except by vote of the public body or by court order. 5 ILCS 120/2.06(e)

In addition, minutes of meetings closed to the public shall be available only after the public body determines that protecting the public interest or the privacy of an individual by keeping them confidential is no longer necessary, except that duly elected officials or appointed officials filling a vacancy of an elected office in a public body shall be provided access to minutes of meetings closed to the public. Access to minutes shall be granted in the public body's main office or official storage location in the presence of a records secretary, an administrative official of the public body, or any elected official of the public body. No minutes of meetings closed to the public shall be removed from the public body's main office or official storage location, except by vote of the public body or by court order. 5 ILCS 120/2.06(f)

A public body may, by a single vote, authorize a series of meetings, portions of which are proposed to be closed to the public, provided each meeting in the series involves the same particular matters and is scheduled to be held within three months of the vote. 5 ILCS 120/2a. The language of Section 2a appears to require that a separate notice be provided to the public if no portion of the meeting is to be held in open session. To the extent that this problem exists, it may be solved simply by beginning and ending each proposed closed, executive session within an authorized series of such meetings with a portion of the meeting open to the public.

K. Exceptions Allowing Closed Meetings

Full meetings, or portions of meetings concerning certain subjects, may be closed to the public, although such exceptions are to be construed narrowly in light of their derogation from the overarching public policy favoring governmental transparency. *See* People ex rel. Ryan v. Vill. of Villa Park, 212 Ill. App. 3d 187, 191 (2d Dist. 1991). The following list is a compilation of statutory exceptions that may be considered in closed sessions (only those subjects most relevant to townships are mentioned, but all exceptions can be found in Section 2(c) of the Open Meetings Act):

1. Collective negotiating matters between public employers and their employees or representatives, 5 ILCS 120/2(c)(2) (since the passage of the Illinois Public Labor Relations

Act, 5 ILCS 315/, and the Illinois Educational Labor Relations Act, 115 ILCS 5/, which grant collective bargaining rights to various public employees, it appears that collective bargaining negotiations and grievance arbitration are simply not subject to the Open Meetings Act and, consequently, no notice of such meetings need be given);

2. Deliberations concerning salary schedules for one or more classes of township employees, 5 ILCS 120/2(c)(2). Note, however, that in PAC Op. 16-013, a reporter filed a request for review with the PAC alleging that a City Council violated the Open Meetings Act when it went into closed session to discuss pay raises for City employees. The City Council argued that it was authorized to go into closed session under section 2(c)(1) of OMA, which allows a public body to go into closed session to discuss the "compensation" of employees. The PAC rejected the City's argument, however, finding that this particular exemption only applies to discussion of compensation of specific employees, and the City Council discussed an "across the board" pay raise rather than raises for named employees. The City also argued that the closed session was authorized under section 2(c)(2) of OMA, which allows a public body to discuss "deliberations concerning salary schedules for one or more classes of employees" in closed session. The PAC rejected that argument, however, because the City Council did not cite that exception when it went into closed session. The PAC concluded that the City Council violated OMA.

3. Meetings where the purchase or lease of real property for the use of the public body is being considered, including meetings held for the purpose of discussing whether a particular parcel should be acquired, or where the public body is considering the setting of a price for sale or lease of its property, 5 ILCS 120/2(c)(5), (6) (these discussions must involve a specific piece of property, rather than just the general idea of buying land or selling land in a particular area, Ryan v. Vill. of Villa Park, 212 Ill. App. 3d 187 (2d Dist. 1991));

4. Meetings held to discuss litigation when an action against, affecting, or on behalf of the particular body has been filed and is pending in a court or administrative tribunal, or when the public body finds that such an action is probable or imminent, in which case the basis for such a finding shall be recorded and entered into the minutes of the closed meeting. 5 ILCS 120/2(c)(11). Where prospective litigation is concerned, there must be a real case or controversy involved rather than a policy or philosophical debate over a matter that, if not handled properly, could result in litigation, see Wyman v. Schweighart, 385 Ill. App. 3d 1099 (4th Dist. 2008). When a public body holds a closed meeting to discuss probable or imminent litigation, it must include in the minutes of that meeting a statement asserting the reasons why the litigation is believed to be probable or imminent. Public Access Opinion Nos. 12-013 and 13-008. In PAC Op. 16-007, the PAC found a public body in violation of the OMA for discussing imminent litigation in closed session. Although the PAC acknowledged that the majority of the closed session related to the board's discussion of the possibility of a lawsuit to challenge a bond sale, nevertheless the PAC rejected the public body's argument that the potential for an injunction or other legal action justified the closed session. The PAC ordered the public body to release a copy of the verbatim recording.

5. Meetings to consider the appointment, employment, compensation, discipline, performance, or dismissal of specific employees, including the public body's legal counsel, or to hear testimony on a complaint lodged against an employee to determine its validity (5 ILCS 120/2(c)(1)); These discussions may involve the entire employment relationship, including the renewal or continuation of employment and compensation (People v. Bd. of Educ. of Dist. 170, 40 Ill. App. 3d 819 (2d Dist. 1976)); The Act now allows closed sessions only to discuss the relationship with an independent contractor legal counsel, but not any other independent contractor (5 ILCS 120/2(c)(1) together with the definition of "employee" contained in 5 ILCS 120/2(d)); Merely claiming that the basis for a closed session is a discussion of an overly-generalized

employment or personnel matter is not sufficient and violates the OMA, as this exception only justifies the discussion of a specific, individual employee and may not be used to discuss employment generally or an entire class of employees (ILL. ATT'Y GEN. OP. NO. S-726 (1974) and Public Access Opinion No. 12-011). Although such discussions are allowed in a closed meeting, it is important to remember that any final action taken on those subjects must occur in a public meeting following the closed session (Public Access Opinion Nos. 13-003 and 13-007);

6. Meetings to discuss professional ethics or performance when considered by an advisory body appointed to advise a licensing or regulatory agency on matters germane to its field of competence, 5 ILCS 120/2(c)(15);

7. Meetings to consider the appointment of a person to fill a public office or vacancy in a public office where the body has the appointing authority, and to consider removal from office where the body has the equivalent power, 5 ILCS 120/2(c)(3). However, when nominees for appointment to a public office are discussed in closed session, the final action of voting on the actual nomination or appointment must take place in a public meeting following the closed session (Public Access Opinion 13-006);

8. Meetings to establish reserves or settle claims as provided in the Local Government and Governmental Employees Tort Immunity Act, if the disposition of a claim or potential claim otherwise might be prejudiced, or to discuss information regarding or from an insurer or self-insurance pool of which the government is a member, 5 ILCS 120/2(c)(12);

9. Meetings to review closed session minutes, including the semi-annual review of closed session minutes pursuant to Section 2.06 of the OMA, discussed above, 5 ILCS 120/2(c)(21) (there is still a question unanswered by the courts or PAC as to whether a vote to approve individual closed-session minutes may be held in closed session);

10. Meetings to discuss self-evaluation, practices and procedures, or professional ethics when meeting with a

representative of a statewide association of which the body is a member, 5 ILCS 120/2(c)(16); and

11. Meetings to consider security procedures and the use of personnel and equipment to respond to an actual, threatened, or reasonably potential danger to the safety of employees and public property, and public bodies may now also hold closed meetings to discuss threats or danger to the security of the public itself, 5 ILCS 120/2(c)(8).

Illinois courts, the Illinois Attorney General and its Public Access Counselor have construed the exceptions to the Open Meetings Act quite narrowly so as to ensure these exceptions may not be used to avoid the general policy of the Act. Ill. News Broad. v. City of Springfield, 22 Ill. App. 3d 226 (5th Dist. 1974). *See also*, ILL. ATT'Y GEN. OP. NO. I-01-003 (which finds that a county board may not discuss the imposition of a "cap" on a public works project in closed session in order to avoid having the amount influence the bidding process, because the Act does not include such a topic among its exceptions).

L. Required Local Training on the Open Meetings Act

Every elected and appointed member of a township board or committee is required to take an electronic training course developed and administered by the PAC. 5 ILCS 120/1.05(b).[2] The training must be completed within 90 days after the township official took his or her oath of office. In addition, the township is required to designate an employee, officer, or elected official to receive training on compliance with the Open Meetings Act and to submit a list of those individuals who have been so designated to the Public Access Counselor ("PAC"). 5 ILCS 120/1.05(a). Every new person designated must receive the training and successfully complete the course within 30 days after that designation. Every person who has received that training must thereafter successfully complete an annual training program. The training program, like a similar one developed for training regarding the Freedom of Information Act, is composed of a series of multiple choice questions, and is available on the attorney general's Website: www.illinoisattorneygeneral.gov. Each

[2] While Section 1.05 provides some alternative training programs, these programs are only for elected school board members, commissioners of drainage districts, directors of soil and water conservation districts, members of park districts, forest preserve districts, conservation districts, or fire protection districts. Currently, no training alternative has been approved for members of township boards and committees.

township is likely to make that decision based upon the manner in which employees and offices are otherwise selected. 5 ILCS 120/1.05.

M. Enforcement of the Open Meetings Act by State's Attorneys or Private Citizens

"Any person," or the state's attorney in the affected county, who believes that the OMA has not been or will not be complied with may bring an action to enforce the Act within either 60 days of the challenged meeting or within 60 days of the discovery of the violation by the state's attorney. 5 ILCS 120/3(a); Verticchio v. Divernon Cmty. High Sch. Dist. No. 13, 198 Ill. App. 3d 202 (4th Dist. 1990); Chicago Sch. Reform Bd. of Trs. v. Martin, 309 Ill. App. 3d 924 (1st Dist. 1999). This latter period of time is meant as an extension for the state's attorney to act upon belated discoveries of information and emphatically does not act as an extension of the 60-day limitation for private persons, which begins running on the date of the contested meeting. Paxson v. Bd. of Educ. of Sch. Dist. 87, 276 Ill. App. 3d 912 (1st Dist. 1995); Kyle v. Morton High Sch., 144 F.3d 448 (7th Cir. 1998). Failure to file a civil suit within the statutory limitations period constitutes a waiver. The term "person" is broad in scope, including other public entities and public officials in their official capacity. Paxson v. Bd. of Educ. of Sch. Dist. 87, 276 Ill. App. 3d 912 (1st Dist. 1995). If the plaintiff prevails in the suit challenging the improperly closed meeting, the court may require the governmental body and any individual member of a board to pay the legal fees of the successful litigant. Although the OMA provides that the private litigant may, if unsuccessful, be required to pay the fees of the governmental body, the court may only award such fees if the private litigant's action was malicious or frivolous in nature. 5 ILCS 120/3(d).

The court may also order equitable relief, including issuing a writ of mandamus requiring that a meeting be open to the public, granting an injunction against future violations of the OMA, ordering the public body to make available to the public such portion of the minutes of a meeting as is not authorized to be kept confidential under the Act, or by declaring null and void any final action taken at a closed session in violation of the Act. 5 ILCS 120/3(c). Courts have generally been unwilling to invalidate acts of a public body for mere technical, formalistic violations of the Open Meetings Act, such as defective notice. Williamson v. Doyle, 112 Ill. App. 3d 293 (1st Dist. 1983).

At least one case has ruled the OMA does not offer any remedy or even provide a cause of action against a member of a public body who

discloses information discussed or revealed during a closed session, thus making punishment of such acts by the governing bodies difficult, although not impossible. Swanson v. Bd. of Police Comm'rs of Vill. of Lake in the Hills, 197 Ill. App. 3d 592 (2d Dist. 1990). *See also* ILL. ATT'Y. GEN. OP. NO. 91-001 (which concludes that a public body has no recourse under either the Act or the Illinois Constitution against its members who violate rules of confidentiality by disclosing information from executive sessions). If this happens and the township is confident that sufficient evidence is available, it should consider either an application to the local state's attorney for a malfeasance prosecution or pursue a civil lawsuit seeking an injunction against the member who is leaking confidential information.

In addition to any civil action taken, the state's attorney may bring criminal proceedings against any person who violates any of the provisions of the OMA, except certain subsections related to the training requirements. Upon conviction, a person is guilty of a class C misdemeanor, may be fined up to $1,500, and may be imprisoned for up to 30 days. 5 ILCS 120/4.

N. Enforcement of the Open Meetings Act by the Public Access Counselor ("PAC")

Prior to the establishment of the Public Access Counselor ("PAC") in the Illinois Attorney General's office, enforcement of the OMA was left to state's attorneys in the various counties, private citizens, and other entities. Many of the private lawsuits were brought by newspapers and other media outlets that felt public bodies were not strictly complying with the Act's requirements. A great deal of pressure was put on the legislature to find a quicker, and perhaps less complicated, way of enforcing the Act. After months of discussions and much urging from the attorney general, the legislature granted extraordinary new powers over local governmental affairs to a centralized location in the attorney general's office. From its inception in 2010 through February 2015, the PAC issued a total of 62 binding opinions involving the OMA and FOIA, in addition to numerous other advisory opinions and pre-authorization letters.

A person who believes a violation of the Act by a public body has occurred is allowed to file a request for review with the PAC. That request must come not later than 60 days after the alleged violation. The request for review must be in writing, must be signed by the requester, and must include a summary of the facts supporting the allegation. Upon receipt of the request for review, the PAC determines whether further action is

warranted. If the request for review seems frivolous, the PAC may simply reject it. If further action is warranted, the PAC may instruct the public body to furnish additional documents and information so the PAC may perform a complete analysis of the circumstances.

For more information about OMA and FOIA reviews by the PAC, see Chapter IV, Section O., of this book. Also, be aware that the PAC has the power to issue advisory opinions to public bodies regarding compliance with the OMA and FOIA. Such non-binding reviews may be initiated by a written request from the head of the public body (township supervisor) or its attorney. A public body that relies in good faith on an advisory opinion of the attorney general in complying with the requirements of the sunshine laws is not liable for penalties under the OMA or FOIA, so long as the facts upon which the opinion is based have been fully and fairly disclosed to the PAC. 5 ILCS 120/3.5(h).

O. Interpretations of the Open Meetings Act

A number of court cases and opinions issued by the Illinois Attorney General have interpreted the provisions of the OMA. As time goes by, we will have a larger collection of formal and advisory opinions of the PAC. Most of the existing opinions have revolved around the issues of what constitutes a "public body," precisely what qualifies as a "meeting," the propriety of a given closed session, and the penalties to be imposed for violations.

Courts have held that meetings or conferences of department heads or employees who seek to improve their performance are not subject to the provisions of the Open Meetings Act. People ex rel. Cooper v. Carlson, 28 Ill. App. 3d 569 (2d Dist. 1975). *See also* Pope v. Parkinson, 48 Ill. App. 3d 797 (4th Dist. 1977). However, the attorney general has found that the governing or advisory board of an intergovernmental agency was subject to the Act. ILL. ATT'Y GEN. OP. NO. 87-001. This interpretation should not be surprising when one recognizes that most such agencies are considered municipal corporations.

Even an informal gathering of public officials may constitute a "meeting" under the OMA. This status prohibits such officials from privately deliberating or acting upon, however informally, public business that could eventually come up for decision before the full body. "In private" does not necessarily mean "in hiding" and may implicate circumstances where the public has not been notified of the gathering, even though it is held in a public place. In People ex rel. Difanis v. Barr,

83 Ill. 2d 191 (1980), the Illinois Supreme Court found that the OMA was violated where nine members of a city council, which constituted a majority of a quorum of the city council, privately met during a political caucus, where they veered off topic and proceeded to discuss, in addition to political matters, four of the five matters on the city council agenda for that evening. This gathering was deemed a public meeting even though no votes were taken at the informal meeting. In the process of finding a violation, the court also reaffirmed that a true political caucus is beyond the scope of the OMA. The supreme court also rejected arguments that the Act violated public officials' First Amendment free speech rights and further determined that officials were not denied due process under either the federal or state constitutions.

Similarly to the *Barr* court's observation that a pure political caucus is unaffected by the OMA, a federal district court held that a political rally participated in by school board members did not constitute a "meeting" under the Act where the participants' discussions were (1) exclusively political in nature; (2) the board members did not consider any reasons for or against any particular course of action, nor were they privy to any dissemination of facts in preparation for a decision; and (3) the participants did not attempt to reach an agreement on a specific item of school district business. Nabhani v. Coglianese, 552 F.Supp. 657 (N.D. Ill. 1982).

An attorney general's opinion concluded that although a group of officials could have discussed the appointment of village officials for the next term in executive session, their discussion of the subject nevertheless violated the Act. Under the facts reviewed in ILL. ATT'Y GEN. OP. NO. 96-005, the gathering was attended by the reelected mayor, a reelected commissioner, and three newly elected, but unsworn, commissioners of a village operating under the commission form of government. These individuals met without first giving the notice required under the Act or otherwise complying with the Act. Because two of the five individuals were public officials and constituted a majority of a quorum of the five-member council, the gathering was subject to the Act. Thus, even though the topic could have been legally discussed in private pursuant to a properly noticed and convened meeting, any discussion undertaken by these five individuals was illegal in light of their failure to comply with the procedural framework delineated in the Act. Note that per a recent amendment to the Act, two members of a five-member body would no longer trigger the Act. However, the substance of this attorney general opinion is still relevant and applicable.

At one time, a question arose as to whether telephonic or electronic transmissions would count as violations of the OMA. Any question about the intent of the General Assembly to prevent non-exempt communications between members of public bodies was definitively dealt with in a 2009 amendment to the Act. A meeting is now identified to mean:

> Any gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication . . . held for the purpose of discussing public business. 5 ILCS 120/1.02.

Under that new broad definition, any such communications would constitute a meeting no matter what ingenious method these officials had chosen in an effort to avoid public view. Under the new law, it would appear that mental telepathy or the use of a spiritual medium would get people into trouble as much as meeting at the local bar. The key to the language appears to be "contemporaneous interactive communications." It is likely the attorney general, state's attorneys and circuit court judges will look closely at whether an improper number of officials are engaged in a process held for the purpose of discussing public business in which ideas are discussed and compromises are worked out at the same time by a prohibited number of people. The Act is not intended to prevent one-on-one discussion in most public bodies. As we get more decisions from the PAC, we will have a better sense of the ultimate outline of where electronic communication stops being like a permitted telephone call between two trustees and is found to take on the aspects of a conference call that is ultimately found to be the equivalent of an improper face-to-face "secret meeting."

P. Ratification of Actions

If any doubt of the propriety of any action taken at an earlier meeting arises, then at a later meeting of the board, the prior actions taken should be listed on the agenda, and a motion should be adopted to ratify all actions taken at the prior meeting. Such a motion to ratify action taken at a special meeting will be effective even though the special meeting was not held pursuant to proper notice. Argo High Sch. Council of Loc. 571 v. Argo Cmty. High Sch. Dist., 163 Ill. App. 3d 578 (1st Dist. 1987); Lindsey v. Bd. of Educ. of Chi., 127 Ill. App. 3d 413 (1st Dist. 1984);

Simpson v. City of Highwood, 372 Ill. 212 (1939). A township may not, however, ratify an action that was unlawful in the first place.

Q. Publication of Proceedings and Other Documents

There is no requirement to publish most proceedings of the board, unless specifically required by statute for a certain action. Many townships publish or record documents that are not required to be so treated by law. In some communities, the practice arose because records tended to disappear. A properly administered records system may ensure the security of documents and save the township considerable funds now spent on unnecessary filing and publication fees.

R. Amendment of Records

Questions often arise regarding the duty of township clerks as keepers of the "accurate records" of the township. Although an attorney general opinion interprets the statutory provisions in the Counties Code, 55 ILCS 5/, delineating the duties of the county clerk, it is helpful on this issue. In this opinion, the attorney general concluded that the county clerk was mandated by law to keep an accurate record of the proceedings of the county board, and, thus, the board may not alter or interfere with that mandate. ILL. ATT'Y GEN. OP. No. 00-004.

Controversies over the amendment of records have produced an unusual amount of litigation. Inadvertencies, omissions, and errors in recording happen frequently. When a record needs to be corrected, correcting the record so it is accurate is important. An error or omission in recording may be excused, but failure to make a correction may not be justified. Hence, courts generally sustain the amendment of records to make them speak the truth. Amendments may be allowed even after litigation has commenced. Jewell v. Bd. of Educ., Du Quoin Cmty. Unit Sch., Dist. No. 300, 19 Ill. App. 3d 1091 (5th Dist. 1974); People ex rel. City of North Chi. v. City of Waukegan, 116 Ill. App. 3d 88 (2d Dist. 1983).

The two principal problems concerning amendment of records are (1) who may amend records; and (2) when may records be amended. As a general rule, the board may amend its records to make them speak the truth at any time while members who passed on the particular matter are still in office and before the rights of third parties have intervened. The clerk may amend the records to make them speak the truth at any time the

clerk is in office. Cnty. of Schuyler v. Mo. Bridge & Iron Co., 173 Ill. App. 435 (4th Dist. 1912).

How can records be amended? The board may amend a record by passing a resolution stating the records that are to be amended, the facts justifying the amendment, and the precise amendment sought. If the clerk makes the amendment, the best practice is for the clerk to report the error and request the board to make the correction. In the event of litigation, parole or oral evidence generally may not be used to alter, explain, or contradict the records of the proceedings of the board. Oral evidence, however, may be used to provide facts about the proceedings that are omitted from the record.

The foregoing problems will never occur if the minutes are carefully prepared by the clerk and carefully reviewed by the board before approval. If minutes are to be corrected at the meeting at which they are first presented, a motion to approve the minutes with the corrections noted is sufficient. A resolution should only be used when the correction is to take place at some subsequent time. Also, a correction of the minutes is proper only when an error in recording has taken place. Thus, one may not "correct" the minutes to reflect a change in position or viewpoint that was changed after the meeting.

VI. GOVERNING DURING AN EMERGENCY

The aim of this chapter is to provide a short summary of the powers available to township's responding to an emergency. In the past, many townships did not have occasion to often consider their legal authority to respond to man-made and natural disasters. However, the recent COVID-19 pandemic required townships to exercise these emergency powers, which experience will hopefully prepare townships to respond to emergencies of all kinds in the future. In addition to reviewing local emergency powers and financial consideration, this chapter reviews how disasters may affect compliance with sunshine laws and the workplace. These laws are continuing to evolve as this edition goes to publication.

A. EMERGENCY POWERS

Whether it is a global pandemic or more common crises like major flooding or tornados, townships have certain emergency powers that can be exercised to deal with these crisis situations. The Governor can declare a state of emergency and issue executive orders related to the management of the crisis at hand. The Governor is given this power under the Illinois Constitution and under the Illinois Emergency Management Agency Act. 20 ILCS 3305/1. During the COVID-19 pandemic, a number of lawsuits challenged the Governor's authority to impose restrictions on various activities and businesses by executive order. While some of those lawsuits are still pending as of this writing, an overwhelming number of those lawsuits were resolved in favor of the Governor's exercise of emergency powers.

B. FINANCIAL CONSIDERATION

1. Disaster Financial Management

Disasters will often cause townships to incur substantial costs while suffering a corresponding loss in revenue. State and local governments are increasingly asked to shoulder disaster-related expenses, and it is unlikely that townships will recover all their costs from a single source. Townships will often use a patchwork of federal and state funding opportunities to help recover their costs, often through existing grant programs or new funding opportunities created in response to the disaster. As a result, townships should carefully track expenses throughout the disaster response to be positioned to substantiate costs for any eligible state and federal relief, and to comply with any subsequent audit requirements. For more information, review the FEMA Disaster Financial Management Guide and other federal and state guidance applicable to the disaster.

2. Borrowing

Disasters may also cause townships to borrow money to meet financial needs, through the issuance of bonds, tax anticipation warrants, installment contracts and/or notes.

3. Contracts

"Force majeure" (superior or irresistible force) clauses often list events that make performance of a contract impossible or impracticable. It is common to list "acts of God" such as earthquakes, floods and other natural disasters as well as other tragic events such as wars and civil strife as excuses for nonperformance.

When an emergency arises, it may be necessary for townships to review and enforce their rights under force majeure provisions in contracts. Likewise, service providers may claim an excused performance to the township based on a force majeure event. Townships should carefully review the contract to determine whether the particular emergency applies to the relevant force majeure terms.

C. SUNSHINE LAWS

1. Open Meetings Act

The General Assembly amended the Open Meetings Act during the COVID-19 pandemic to allow public bodies to hold "an open or closed meeting by audio or video conference without the physical presence of a quorum of the members" during a public health disaster under certain conditions. 5 ILCS 120/7(e).

(1) Preparing for the Meeting

a. Disaster Declaration Required

First, the Governor or the Illinois Department of Public Health must make a disaster declaration for all or part of the public body's jurisdiction related to public health concerns. Gubernatorial Disaster Proclamations similar to those related to COVID-19 would satisfy this condition while they are in effect.

b. Determination by Head of Public Body

Next, the township supervisor or other person holding primary executive and administrative authority for the local government must determine that an in-person meeting would not be practical or prudent because of the disaster.

c. Notice to Public Body Members and News Media

The public body must notify its members, and the news media that requested notice of meetings, that the meeting will be held by audio or video conference without a physical quorum. The notice should also be posted on the public body's website. In the case of a bona fide emergency, notice should be given to the news media that requested notice as soon as practicable, but in any event prior to the holding of such meeting. The presiding officer must state the nature of the emergency at the beginning of the meeting.

d. Notice of Alternative Public Attendance

If the disaster makes physical attendance by the public unfeasible, the public body must make alternative arrangements that will allow any interested member of the public access to contemporaneously hear all discussion, testimony, and roll call votes, such as by offering a telephone number or a web-based link. Those arrangements should be included in the required notice and publication.

e. Public Body Bears Costs

The public body must bear all costs associated with complying with the requirements for meetings by audio or video conference without a physical quorum. In other words, a local government should not use an audio or video conference service that charges members of the public to participate.

(2) When the Meeting Starts

a. Record the Meeting

In general, local governments are not required to record their meetings, except for closed session. However, they must keep a verbatim record in the form of an audio or video recording for meetings without a physical quorum. These recordings must be made available to the public

and are otherwise subject to the Act's provisions regarding maintenance, review and destruction of closed session recordings.

b. Minimum Physical Presence, if Feasible

Unless the disaster makes it unfeasible, at least one member of the public body, the chief legal counsel or the chief administrative officer must be physically present at the regular meeting location.

c. Make Sure Participants Can Hear One Another

The public body should verify the participating members and make sure they can hear one another and all discussion and testimony. The public body should also make sure that any physically present members of the public can hear the discussion and testimony. The reference to "testimony" suggests the General Assembly intended to facilitate public hearings without a physically present quorum.

d. Determine a Quorum

Each member of the body participating in a meeting by audio or video conference should be considered present for purposes of determining a quorum and participating in all proceedings.

(3) During the Meeting

a. Roll Call Votes Required

All votes should be done by roll call during a meeting without a physical quorum, so each member's vote can be identified and recorded.

b. Minutes and Public Comment

Meetings without a physical quorum are still subject to the requirements of Section 2.06 of the Open Meetings Act. In addition to complying with closed session verbatim recording requirements, public bodies should keep minutes as they ordinarily would. In addition, members of the public must still have an opportunity to address the public body, under its adopted rules.

2. Freedom of Information Act

Where past disasters have not relaxed the requirements of the Freedom of Information Act (FOIA), townships should be prepared take

advantage of the Act's existing provisions to manage public records requests even under challenging conditions.

During past emergencies, the Public Access Counselor reminded public bodies they can extend the time to respond to requests for an additional five days based on the reasons described in the FOIA by notifying requesters about the reasons for the delay and the date when the public body will respond to the request. When emergency conditions make responding to requests difficult, the PAC has encouraged requesters and public bodies to reach a reasonable, mutually agreeable response period to comply with FOIA requests. When public bodies may be operating with limited staff and resources during a disaster, the PAC has suggested using the unduly burdensome exemption, particularly in circumstances where unavailable staffers cannot review records or the request requires reviewing records located off-site that are unattainable.

In any event, municipalities should not ignore FOIA requests during a disaster and should work with requestors to satisfy their requests for information. While fulfilling FOIA requests during a disaster may be challenging, emergency circumstances may increase the need for sharing public information.

D. EMERGENCIES IN THE WORKPLACE

Whenever there is an emergency situation, it can have great impact in and on the workplace. Employment issues are generally complex because of individual and unique circumstances; however, the following best practices can be helpful for local governments in minimizing negative effects.

1. Paid Sick Leave

In case of a public health emergency, there are federal and state laws on sick leave that come into play. Employers should be flexible when it comes to sick leave during a health crisis and be extra careful not to create situations where employees can spread diseases. When it concerns a "serious health condition", employers should check the FMLA and state laws and work with the employees to make sure any health risks to others in the workplace are mitigated in a reasonable manner for all parties concerned.

In working with the employees on sick leave situations, employers cannot without reasonable belief determine that someone's medical condition presents a direct threat, as described in the Americans with

Disabilities Act. The situation needs to be assessed in such a manner that all options from working in the office to working from home, or if working from home is not possible, being sent home, are weighed.

In past public health emergencies, the EEOC guidance has allowed employers to ask their employees about their current medical condition and whether or not they may be infected.

2. Working from Home and Travel Plans

Working from home has been a proven way of making sure that during an emergency, employees can continue to work, provided that employers make sure they have policies and protocols in place. If an employee plans to travel to an area where the emergency is occurring, employers should advise them on preventative and security measures to be taken. These can be part of a temporary travel policy or a specific response plan for the various types of possible emergencies.

3. Health and Hygiene

Not only in emergency situations, but also in quiet times, it is a good idea for employers to promote health and hygiene habits. For guidelines on this, employers and employees can consult the CDC's website and its publications.

4. Layoffs

Layoffs as a result of an emergency situation, such as a global pandemic and subsequent economic recession, are not a cookie-cutter matter. Townships do not have the statutory authority to declare bankruptcy, so laying off employees for financial or fiscal reasons is not a given. First, there are collective bargaining agreements, prescribed by the National Labor Relations Act. This Act provides that employers and unions should negotiate in good faith about all the terms of the employment contract. When it comes to terminating the contract, this will have to be in agreement with the parties and cannot be a unilateral decision, unless so provided for in the contract.

So in the unfortunate event that there is the threat that personnel have to be laid off, townships have an obligation to negotiate with the represented labor unions first. In the contracts with the labor unions there are often force majeure clauses for financial and fiscal emergency situations that allow the contracts to be reopened and renegotiated. Before actual layoffs there are numerous ways in which the municipalities can

ease the financial burden at least temporarily, without having to take that last drastic step of laying off employees, such as reducing the number of hours for certain employees, reducing the number of paid holidays that are in excess of the national average, or foregoing employee pay raises for a year.

VII. TOWNSHIP COMMITTEES AND COMMISSIONS

A. Youth Services – Township Committee on Youth

The township board may appoint a Township Committee on Youth comprised of not less than five members. The terms of the Committee are initially set by the board at one, two, and three years, staggering the terms so that, after the initial appointments, the term of each member is for three years, and the smallest possible portion of the terms on the Committee will expire in any single calendar year. The members of the Committee select one of their number to serve as chairperson and are authorized to elect other officers as they deem necessary. Committee members serve without compensation but may be reimbursed for any necessary expenses incurred in the performance of their duties.

The Township Committee on Youth may provide programs to combat and prevent juvenile delinquency, to provide necessary or required transportation services, and to meet the needs of local youth. With approval of the township board, the Committee may cooperate with other governmental entities and with any other organizations, associations, agencies, or persons in the fostering, development, and provision of local programs designed to combat and prevent juvenile delinquency and to meet the needs of local youth. 60 ILCS 1/215-5.

B. Youth Service Bureaus

The township board may provide for the establishment or maintenance (or may enter into contractual agreements with other townships, municipalities or counties for the establishment or maintenance) of youth service bureaus or may enter into contractual agreements with established youth service bureaus, public or private, serving the general area of the township. The agreements must be in writing and provide for services to residents of the township under 13 years of age. Agencies providing services to adults in addition to youths, however, may qualify as youth service bureaus. “Youth service bureau” means any public or private agency providing, or arranging for the provision of, assistance to persons referred to the agency by law enforcement officials, court agencies and other agencies, and individuals with the intention of diverting the persons from formal processes of the court. 60 ILCS 1/215-10.

The electors may authorize the township board to levy a tax (at a rate of not more than 0.15% of the value, as equalized and assessed by the Department of Revenue, of all taxable property in the township) for the sole purpose of providing such service programs for youths. The tax may

not be levied, however, unless the tax is approved by the voters at a referendum held in accordance with the general election law. 60 ILCS 1/35-60.

C. Runaway or Homeless Youths

The township board may annually appropriate funds to private nonprofit organizations for the purpose of providing services to runaway or homeless youths and their families. The services may include temporary shelter, food, clothing, medical care, transportation, individual and family counseling, and any other service necessary to provide adequate temporary, protective care for runaway or homeless youths and to reunite the youths with their parents or guardians. "Runaway or homeless youth" means a person under the age of 18 years old who is absent from his legal residence without the consent of his parent or legal guardian or who is without a place of shelter where supervision and care are available. 60 ILCS 1/215-15.

D. Services for the Disabled – Committee on Persons with Disabilities

The township board may appoint a Township Committee on Persons with Disabilities, comprised of not more than ten members, a majority of whom must consist of persons with disabilities. "Persons with Disabilities" means any persons with a physical or developmental disability. At least one of the members on the Committee must be a township trustee, appointed by the chairman of the township board. The Committee members must select one of their number to serve as chairman and may select such other officers as are deemed necessary. The initial members serve their terms as follows: three members for one year, three members for two years, and three for three years. Succeeding members serve three-year terms. The initial and succeeding trustee members serve three-year terms or until termination of their service as township trustees, whichever occurs first. The Committee members serve without compensation but may be reimbursed for allowed necessary expenses incurred in the performance of their duties.

The Committee is required to cooperate with any appropriate public or private entity to develop and administer programs designed to enhance the self-sufficiency and quality of life of citizens with disabilities residing within the jurisdiction of the township. The Committee may receive any available monies from private sources, and the township board may provide funding from the township general fund. The township board may

also establish and administer a separate fund for the Committee on Persons with Disabilities and authorize all committee expenditures from that fund. In addition, the Committee may enter into service agreements or contracts for the purpose of providing needed or required services or make grants to another governmental entity, not-for-profit corporation, or community service agency to fund programs for the persons with disabilities, subject to the approval of the township board. The Committee must report monthly to the township board on its activities and operation. 60 ILCS 1/225-5.

E. Mental Illness or Developmental Disability Programs

A township may provide facilities or services for the benefit of its residents who are persons with a mental illness or developmental disability and who are not eligible to participate in any such program conducted under Article 14 of the School Code or may contract therefore with any privately or publicly operated entity that provides facilities or services either within or outside of the township. For this purpose, an annual tax may be levied of not more than 0.1% of the value of all the taxable property in the township as equalized or assessed by the Department of Revenue upon that property. The tax is levied and collected in the same manner as other township taxes but cannot be included in any limitation otherwise prescribed as to the rate or amount of township taxes and must be in addition to and in excess of other township taxes. When collected, the tax is be paid into a special fund in the township treasury, designated as the "Fund for Persons with a Mental Illness or Developmental Disability" and together with any interest earned, be used only for the purpose of providing facilities or services for the benefit of township residents who have a mental illness or development disability. 60 ILCS 1/185-5.

When a township levies a tax for such purpose, the township supervisor, with the advice and consent of the township board, must appoint a board of three directors who serve as the township Board for Care and Treatment of Persons with a Mental Illness or Development Disability. The initial appointees are appointed for terms expiring, respectively, on June 30 in the first, second, and third years following their appointment as designated by the appointing authority. All succeeding terms are for three years, and successors are appointed in the same manner as the initial appointees. Vacancies are filled in the same manner for the balance of the unexpired term. Each director serves until his or her successor is appointed. Directors serve without compensation but are reimbursed for expenses reasonably incurred in the performance of their duties. 60 ILCS 1/185-15.

F. Committee on Literacy

The township board may appoint a township committee on literacy of at least five members and initially establish the length of the members' terms for one, two, and three years, staggering the terms so that after the initial appointments, the term of each member is for three years, and that the smallest possible portion of the terms on the committee will expire in any single calendar year. Members of the township committee on literacy select one of its members to serve as chairperson and may elect any other officers as necessary.

The Committee may provide programs to combat and prevent illiteracy and alliteracy and meet the basic skill needs of local residents. With board approval, the committee on literacy may cooperate with existing alliteracy and literacy programs, libraries, other governmental entities, and with any other organization, association, agency, or person in the fostering, development, and provision of local programs designed to combat and prevent illiteracy and alliteracy and to meet the basic skill needs of local residents. 60 ILCS 1/153-50.

G. Committee for Senior Citizens' Services

The township board may appoint a township committee for senior citizens' services, comprised of not more than nine members. A minimum of one-third of the committee, however, must be at least 55 years of age or older. The initial members serve their terms as follows: three members for one year, three members for two years, and three members for three years. Succeeding members serve three-year terms and are not compensated but may be reimbursed for necessary expenses incurred in the performance of their duties. Committee members select one of their number to serve as chairman and may select other officers deemed necessary.

The committee must cooperate with the Illinois Department on Aging and with the Department of Transportation, whenever appropriate, to develop and administer programs designed to maintain the self-sufficiency and personal well-being of citizens residing within the jurisdiction of the township who are 55 years of age or older. The Committee may receive federal funds made available to the Department on Aging or the Department of Transportation for the implementation of federally approved senior citizens programs. The local funding must be provided from the township fund. 60 ILCS 1/220-10.

Whenever the electors at an annual or special town meeting determine that the general township fund of the township contains funds not derived from a township tax levy that are not needed for township purposes during the remainder of the then current fiscal year, the electors may by a resolution adopted by the affirmative vote of two-thirds of the electors attending the meeting, direct that all or any portion of the funds be distributed to a for-profit (or not-for-profit) and nonsectarian organization that provides services or facilities to the township's older inhabitants or to the board of managers of a township community building to be used for the operation and maintenance of a nonsectarian activity and guidance center for the older inhabitants of the township. The electors attending the annual or special township meeting may also, by a resolution adopted by the affirmative vote of two-thirds of those electors attending, direct that all or a portion of the available funds be expended directly by the township to provide services or facilities for older inhabitants. 60 ILCS 1/220-15.

The committee may also enter into service agreements or contracts for the purpose of providing needed or required transportation services or make grants to another governmental entity, not-for-profit corporation, or community service agency to fund programs for senior citizens, subject to the approval of the township board. 60 ILCS 1/220-10.

H. Zoning and Planning Commission

When authorized by the township electors, a township may enjoy zoning powers. In townships located in counties with a population of fewer than 600,000 and in townships with more than 500 people located in counties with a population of more than 3,000,000, the township board may create a township plan commission. This commission may prepare and recommend to the township board a comprehensive plan for the development of the unincorporated areas of the township. The commission may also recommend changes in the official comprehensive plan. 60 ILCS 1/105-35. A township with a plan commission also enjoys certain protest rights with respect to county zoning. See 55 ILCS 5/5-12007. For a more thorough description of powers of township plan commissions, see Section 105-35 of the Township Code. The creation of a zoning ordinance is a complicated process and can result in controversy and litigation more than most regulatory ordinances. In effect, through zoning, a township decides what development can and cannot occur on property the township does not own. Any decision of a township plan commission (instead of only those adopted) regarding a petition or application for a special use, variance, rezoning, or other amendment to a zoning ordinance, is subject to *de novo* judicial review as a legislative

decision. 60 ILCS 1/110-50.1. Townships engaging in zoning should seek planning and legal expertise in any stage of the zoning process to attempt to avoid litigation that could result in damages.

The Township Code provides additional measures when a Zoning and Planning Commission exercises authority over property within a school district. In any hearing before a zoning commission or board of appeals, any school district within which the property in issue, or any part of that property, is located may appear and present evidence. 60 ILCS 1/110-70(a). In exercising the powers under this Article with respect to public school districts, a township shall act in a reasonable manner that neither regulates educational activities, such as school curricula, administration, and staffing, nor frustrates a school district's statutory duties. 60 ILCS 1/110-70(b). In processing zoning applications from public school districts, a township shall make reasonable efforts to streamline the zoning application and review process for the school board and minimize the administrative burdens involved in the zoning review process, including, but not limited to, reducing application fees and other costs associated with the project of a school board to the greatest extent practicable and reflective of actual cost but in no event more than the lowest fees customarily imposed by the township for similar applications, limiting the number of times the school district must amend its site plans, reducing the number of copies of site plans and any other documents required to be submitted by the township, and expediting the zoning review process for the purpose of rendering a decision on any application from a school district within 90 days after a completed application is submitted to the township. 60 ILCS 1/110-70(c)

VIII. TOWNSHIP EMPLOYEES

A. Hiring and Terminating Employees

Township boards have the ability to hire employees, except in instances where the ability to hire has specifically been given to a particular township officer. For example, supervisors have the ability to hire general assistance employees, assessors have the ability to hire employees of the assessor's office, and highway commissioners have the ability to hire road district employees, etc. 60 ILCS 1/100-5. Generally, unless an employee has a contractual relationship with the township, the employment relationship is "at-will," which means that either the employer or the employee can terminate the employment at any time, for any reason or for no reason at all (provided the reason for termination is not some type of unlawful discrimination).

Recently, however, a trend has been developing in which courts have been finding a protected "property interest" in continued public employment. When this interest exists, dismissal must comport with the requirements of due process. Whether it exists depends on the surrounding circumstances, including personnel policies, handbooks, job offers, agreements with particular employees, and other similar factors. Language in a personnel manual, for example, can create a binding contract with property interests, but if properly drafted, will not independently create a property interest. Duldulao v. St. Mary of Nazareth Hosp. Ctr., 115 Ill.2d 482, 505 N.E.2d 314 (1987). For instance, employee manuals or company handbooks with clear disclaimers that explain that the employment relationship is at-will have been found sufficient to negate evidence of contractual rights. Vickers v. Abbott Lab., 308 Ill. App. 3d 393, 719 N.E.2d 1101 (1st Dist. 1999). However, an employer's unilateral modification of an employee handbook to include a contract disclaimer after employment has commenced has been found to be invalid in the absence of a reservation of the right by the employer to make unilateral changes. Doyle v. Holy Cross Hosp., 186 Ill.2d 104, 708 N.E.2d 1140 (1999).

Language in a personnel code that provides that an employee may not be fired except "for cause" not only means that the employee must be given some reason for the firing, but it also means that the employee is entitled to a full due process hearing. Sometimes, however, personnel codes contain language indicating that the statements in the code merely set goals of employee and employer behavior. Courts have permitted public entities to change or, in some instances, disregard these statements or goals.

Employees may not be fired for exercising their constitutional rights, including criticizing elected officials, joining labor unions, or living a life style that does not offend community standards or interfere with their job performance. However, there are limits to this last proposition. In City of San Diego v. Roe, 543 U.S. 77 (2004), the United States Supreme Court held that a police officer who produced and sold a videotape of himself performing explicit acts was not protected by the First Amendment because the officer was not speaking on a matter of public concern. Moreover, the United States Supreme Court held in Garcetti v. Ceballos, 126 S.Ct. 1951 (2006) that a deputy district attorney's speech was not protected by the First Amendment where it was made pursuant to his official duties. However, employees may not be subjected to discharge or any type of retaliation for "whistle blowing."

Employees who hold non-policy-making, non-confidential positions may not be denied employment or be fired solely because they belong to another political party. In Elrod v. Burns, 427 U.S. 347 (1976), the United States Supreme Court held that the practice of patronage dismissals violated the First and Fourteenth Amendments of the Constitution. The rationale underlying this decision is that patronage dismissals severely restrict political belief and association, which constitute the core of those activities protected by the First Amendment, and government may not force a public employee to relinquish the right to political association as the price of holding a public job. The Court stated that, since unproductive employees may always be discharged and merit systems are available, less drastic means than patronage dismissals are clearly available to insure the vital need for governmental efficiency and effectiveness. Elrod v. Burns, 427 U.S. 347 (1976). This holding has been extended by the United States Supreme Court to cover independent contractors. *See* O'Hare Trucking v. Northlake, 518 U.S. 712 (1996). The Supreme Court also has stated that, unless the government can demonstrate an overriding interest of vital importance requiring that a person's private beliefs conform to those of the hiring authority, such beliefs cannot be the sole basis for depriving him of continued public employment. Branti v. Finkel, 445 U.S. 507 (1980). Although a pre-termination hearing may not be required, under some circumstances the courts may require a post-termination hearing. *See* Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532 (1985).

B. Employee Benefits/Personnel Policies

If a township board employs 5 or more employees, it shall adopt rules concerning all benefits available to those employees. These rules shall include, without limitation, information regarding insurance

coverage, compensation, overtime pay, compensatory time off, holidays, vacation, sick leave, and maternity leave. The rules shall be adopted and filed with the township clerk. 60 ILCS 1/100-5(b). Similar provisions exist for road districts (605 ILCS 5/6-201.20) and the Assessor's office (35 ILCS 200/2-65(b)).

C. Affordable Care Act

The Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010, as amended by the TRICARE Affirmation Act and Public Law 1173, otherwise known as the "Affordable Care Act" ("ACA") or "Obamacare," was signed into law by President Obama on March 23, 2010. Because of the sweeping changes effected by the law, provisions of the ACA are being phased in through 2020. The major impact on employers, including townships, however, occurred effective January 1, 2014.

Two of the major provisions that affect townships are the employer-shared responsibility requirements and the individual-shared responsibility payment. The employer-shared responsibility payments provide that a "large employer" that fails to offer minimum essential coverage to all full-time employees and their dependents may be subject to "assessable payments" (sometimes called a "play or pay" penalty) of $2,000 annually ($166.67 per month) times the number of full-time employees less the first thirty.

Under the ACA, a "large employer" is defined as one that employs an average of at least 50 full-time and full-time equivalent employees. For any month, a full-time employee is one who works at least 30 hours per week or 130 hours per month. All employees who meet this definition must be included in the category of full-time employees.

Determination of large employer status also requires inclusion of full-time equivalent ("fte") employees. Determination of fte employees for a calendar month requires adding up the number of hours worked by employees who are not full-time employees (up to 120 hours per month) and dividing that number by 120. Thus, for any month, if non-full-time employees worked a total of 1,200 hours, dividing that number by 120 would yield 10 fte employees. That number is then added to the number of full-time employees; if the resulting number is 50 or more, the township is considered to be a large employer for ACA purposes.

Townships that are not large employers are not required to make employer "play or pay" penalty payments. Large employers may be

required to make such payments to the extent that its insurance coverage does not cover all full-time employees (not including, for this purpose, part-time or fte employees) and their dependents. “Dependents” include the employee’s children under the age of 26 but not the employee’s spouse.

An alternative tax penalty is incurred if the employer does offer coverage but the coverage is deemed “unaffordable,” that is, if the employee’s coverage for employee-only coverage exceeds 9.5% of the employee’s taxable income for the tax year. Dependent coverage is not considered in making affordability determinations. The “play or pay” penalty for unaffordable employee-only coverage is $3,000 annually for each full-time employee who is “subsidized” under the ACA, *i.e*., for each full-time employee who enrolls in coverage through one of the insurance exchanges to be set up in each state and who receives a premium tax credit or cost-saving reduction as a result.

The individual-shared responsibility provision affects townships only indirectly. This provision arises out of the ACA requirement that all covered individuals must have minimum essential health care coverage. This requirement applies to individuals of all ages, including children, unless they are exempted from coverage by the statute. The maximum amount of the individual-share responsibility payment is the average premium for ‘bronze level” (minimum coverage) plan available through the exchanges.

Townships are affected by the individual-shared responsibility payment only to the extent that policy decisions to reduce the scope of medical care coverage under a township’s health care plan could result in employees having to obtain insurance from the exchanges or make “play or pay” penalty tax payments. This situation, in turn, could affect an employee’s decision as to whether to continue employment with the township or look elsewhere for employment that provides insurance coverage sufficient to enable him or her to avoid having to obtain insurance through the exchanges or make penalty tax payments. Townships should be mindful that insurance payments under the Affordable Care Act are not permitted to be made directly to the elected official or employer and can only be paid to the insurance provider.

D. Personnel Records

Under the Illinois Personnel Records Review Act, township employees have a right to review their personnel records twice in a

calendar year upon request. A township may require that such requests be made in writing on a form provided by the township. Requests must be granted within seven days. 820 ILCS 40/0.01, *et seq*. Personnel documents that are, have been, or are intended to be used in determining an employee's qualifications for employment, promotion, transfer, additional compensation, discharge, or other disciplinary action are all subject to inspection by that employee, unless a record falls within one of the exceptions to the type of records that are subject to review. 820 ILCS 40/10. An employee who disagrees with anything in his or her personnel file may request that it be removed or corrected, and if this is denied, he or she may have a written statement placed in the file explaining his or her position. 820 ILCS 40/6.

A township is not required to allow an employee to remove any of the records from the place of inspection. Precautions should be taken to preserve the integrity and completeness of personnel files made available for inspection. After reviewing them, an employee may request copies of the documents reviewed and a copying fee not exceeding the actual copying costs may be charged. An employee involved in a pending grievance proceeding may designate, in writing, a union or other representative who may inspect reviewable portions of the employee's file that relate to the resolution of the grievance.

Under Section 10 of the Act, the right of an employee or an employee's designated representative to inspect the employee's records does not apply to:

1. letters of reference;

2. test documents (except cumulative test scores);

3. information of a personal nature about another person that would invade the other person's privacy if disclosed;

4. records related to any pending claim between the employer and employee that may be discovered in a judicial proceeding;

5. records from the investigation of an employee's criminal conduct or activity reasonably expected to harm the township's operations or property (until the township takes action based on the information); and

6. staff planning records. (However, under this exception, only materials related to overall staffing needs and planning

regarding more than one employee may be withheld). 820 ILCS 40/10.

E. Independent Contractors

Townships frequently hire "independent contractors," a class of individuals who are neither officers nor employees. Frequently, the part-time township engineer or lawyer falls into this category. Such individuals are hired pursuant to a written contract or continuing motions of a council or board directing that particular assignments be carried out. Independent contractors are hired by the corporate authorities unless the power to hire or fire is delegated to some other person or body.

F. Workers' Compensation

Workers' compensation is a statutory system of benefits provided to workers who have job-related injuries or diseases. These benefits are paid regardless of fault, but the law establishes a schedule limiting the amount of benefits recovered. This system reflects a legitimate compromise created over 100 years ago between employer and employee interests. The provision of benefits is governed by the Workers Compensation Act and administered through the Illinois Workers' Compensation Commission. 820 ILCS 305/1, *et. seq.*

The Workers Compensation Act requires an employer to pay benefits to an employee injured in the course and scope of his/her employment. Before paying benefits, the employer must ensure that the employee's injury meets the requirements of the Act and that an employer-employee relationship exists. The Illinois Workers Compensation Act automatically applies to all township employees, including police officers and firefighters in communities with a population of less than 500,000. 820 ILCS 305/1(b). A member of a fire department in any city whose population is more than 500,000 inhabitants is considered an "employee" under the Act only with respect to claims for any serious and permanent disfigurement. Additionally, members of a fire department in a city whose population is more than 500,000 inhabitants are eligible for compensation for serious and permanent disfigurement only where the disfigurement results from burns. 820 ILCS 305/8(c).

Generally, volunteers are not considered to be employees for the purposes of the Act. Some insurance policies or governmental pools do pay the equivalent of workers compensation benefits to volunteers. Volunteer firefighters, police officers and civil defense workers are

covered by the Act. Part-time employees are covered by the Act. 820 ILCS 305/10.

An individual employed by a contractor who has contracted with a township is not considered an employee of the township. An independent contractor hired by a township will not be covered unless the township exercises substantial control over the contractor. Wenholdt v. Indus. Comm'n., *et al*, 95 Ill.2d 76, 447 N.E.2d 404 (1983)

To obtain compensation under the Act, an employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries. 820 ILCS 305/1(d). The injury must also arise out of and be in the scope of the employee's work. In other words, the employment must be a causative factor of the injury. Whether an injury results from the employment is significantly dependent on the specific facts of the situation and should be evaluated closely before being accepted as covered under the Act.

An injury is not caused by the employment merely because the accident occurs on the employer's premises, and an injury while commuting to and from work is generally not compensable. However, an injury occurring outside the workplace or while traveling will be covered if related to the employment. For example, an injury to a city inspector from a falling beam while inspecting a construction site is compensable.

Injuries occurring during purely voluntary recreational activities will not be covered even if the employer pays the costs associated with the activity. However, the employee will be entitled to benefits when the employer orders or assigns the employee to participate in the recreational program.

The employee must give the employer notice of an injury within 45 days of the injury or the manifestation of symptoms. The Act requires employers to pay benefits for the aggravation of pre-existing injuries. Psychological injuries and injuries arising out of repetitive tasks, such as typing, may also be covered.

If the employment, notice, and causation requirements are met, the Workers Compensation Act provides three primary benefits to an injured employee: medical expenses, temporary total disability, and permanent impairment benefits. First, the employer must pay all reasonable and necessary medical costs related to the injury, including prescription medication and prosthetics. The Act requires employers to pay for emergency medical treatment and all treatment rendered by no more than

two subsequent medical providers who may be selected by the employee as well as any specialists referred by the two providers. The employer may send the employee for an independent medical examination to verify proper medical treatment and assess the employee's inability to work. 820 ILCS 305/12.

The Act also requires the employer to pay temporary total disability to the injured employee while that individual is unable to work. A temporary total disability payment is two-thirds of the employee's average weekly wage. Police officers, firefighters, and paramedics are entitled to their full salary during the first year of injury. 5 ILCS 345/1. An employer may withhold a temporary total disability payment for a legitimate reason, such as when a medical examination indicates that the employee is able to work either at his or her regular position or at a "restricted or light duty" position. However, the employer should notify the employee with a written statement that benefits are being stopped and the general reasons for such a termination. Arbitrary or unreasonable withholding of benefits and failure to notify the employee will subject the employer to penalties.

If an employee's injury causes a "loss of use" to a part of the body, he or she is entitled to permanent partial impairment benefits. Generally, a permanent partial impairment award occurs when the employee's condition will no longer improve, and it is reasonably certain that the employee is or may later be unable to do things with the body part or the body as a whole that he or she used to do. Permanent partial impairment benefits are based upon 60% of the employee's average weekly wage multiplied by a figure representing the percentage of loss of use to the body part or person as a whole. The Act contains a schedule for how many weeks of benefits the loss of a particular body part, i.e. hand, leg, etc., equals if there is 100% loss of use of that member. However, the Act provides no direction about determining partial loss of use of any particular body part. This determination is made, ultimately, by arbitrators at the Illinois Workers' Compensation Commission. The Act also provides for vocational rehabilitation and the award of a wage differential when the employee is no longer able to perform his or her job and is forced to accept lower paying work.

When an employee suffers a work-related injury that renders him or her permanently unable to perform any kind of work for which there is a reasonably stable employment market, the employee is entitled to permanent total disability benefits. These benefits are paid for life and calculated using two-thirds of the employee's average weekly wage. Under the statute, the loss of use of both arms, hands, legs, feet, eyes, or

any two such parts compels a finding that the employee is permanently and totally disabled. Permanent partial and permanent total disability awards may be paid in a lump sum settlement.

Workers' compensation disputes are adjudicated through the Illinois Workers' Compensation Commission. A claim is heard at an administrative proceeding held before an arbitrator appointed by the Commission. The parties may have the Commission review the arbitrator's decision, and Commission decisions may be appealed to the state courts.

Township employers should be aware of the interaction between workers' compensation law and other laws. For example, a township will be entitled to a credit of workers' compensation benefits paid when an employee is granted pension benefits for the same injuries from the Illinois Municipal Retirement Fund. If the injured employee successfully sues a negligent third party, the employer has a lien on the proceeds of that lawsuit for a portion of the workers' compensation benefits paid.

Careful management of workers' compensation claims is important for any township wishing to minimize expenses. Safety regulations should be promulgated, posted, and strictly enforced. Injury reporting policies should also be developed. Timely injury reports and witness statements help manage the claim and prevent fraud. A township should also obtain workers' compensation insurance to sufficiently protect itself. A general liability policy will not cover employee injuries. Many local governments have chosen to self-insure their workers' compensation exposure, either on their own or by forming a risk-pool with other governmental entities.

G. Laws Affecting Employee Compensation

The township board is authorized to employ and fix the compensation of township employees that the board deems necessary, excluding the employees of the offices of supervisor of general assistance, township collector, and township assessor. 60 ILCS 1/100-5. With respect to the township attorney, the township board determines the compensation paid. However, the township attorney is not considered an employee if he or she functions as an independent contractor. Unless otherwise provided and if approved by the highway commissioner, the township board of trustees may employ and fix the compensation of a separate township attorney to represent the highway commissioner. Such compensation is paid out of the township road fund. 60 ILCS 1/100-5.

For all other employees, the township board is required to set and adopt rules concerning all benefits available to employees of the township board if the board employs five or more employees. The rules must include, without limitation and to the extent they are applicable, insurance coverage, compensation, overtime pay, compensatory time off, holidays, vacations, sick leave, and maternity leave. The rules must be adopted and filed with the township clerk as well as any amendments on or before their effective date. 60 ILCS 1/100-5(b).

1. Fair Labor Standards Act ("FLSA")

A township is subject to the Illinois Minimum Wage Law (IWL) and also to the Fair Labor Standards Act (FLSA), which establishes Federal regulations relating to minimum wage, overtime pay, and other matters. Garcia v. San Antonio Metro. Transit Auth., 469 U.S. 528 (1985). The general rule under the Fair Labor Standards Act (FLSA) is that employers must pay their employees time-and-a-half for hours worked in excess of 40 in a seven-day week. In this regard, each workweek stands on its own; unless exempted, an employee must be paid overtime for each workweek in which he works over 40 hours, even though he may work only 80 hours in a payroll period.

The overtime requirement does not apply to employees who are exempted from the requirement by statute. The most common exemptions are the exemptions for executive, administrative, and professional employees, computer professionals, and outside salesmen. The overtime requirement also does not apply to employees of either police or fire departments that employ less than five employees. Civilian personnel and bona fide volunteers employed by such departments are not counted in determining whether this exemption applies. However, part-time police officers, firefighters and department members who may themselves be exempt from coverage under the FLSA as executives, administrators or professionals are counted. 29 U.S.C. §553.1(d).

Various work periods ranging from seven to 28 days can be established under the partial exemption contained in Section 207(k) of the FLSA (the "Section 7(k) exemption"). If the conditions for the application of the Section 7(k) exemption apply, the overtime requirements of the FLSA are met where, for example, firefighters are paid overtime for any hours in excess of 212 worked during a 28-day period or for any proportional number of hours worked in a lesser period, ranging down to any hours in excess of 53 in a seven-day period. For police officers, the Section 7(k) exemption can apply to require overtime to be paid only after

181 hours of work in a 28-day period, or proportionally fewer hours worked in lesser work periods between seven and 28 days in length. Thus, electing to use the Section 7(k) exemption for police and fire employees can reduce the department's overtime liability more than would the standard seven-day work period.

In 1985, the FLSA created a statutory exception for public employers from the requirement that overtime be paid only in cash. This exception provides that "non-exempt" public employees may be paid by compensatory time ("comp time") meaning time off from work, in lieu of cash overtime in certain circumstances. The use of comp time must be pursuant to an agreement with the employee or union. There are no requirements that a formal written agreement must be established, but some written record should be maintained. Comp time must be awarded on a time-and-a-half basis. That is, one and one-half hours of comp time must be awarded for every hour of overtime worked, in lieu of cash overtime payment.

Employees other than police and firefighters may bank only as many as 240 hours. An employee's request to use comp time must be granted within a reasonable time unless it would unduly disrupt the operation of the township. An employee with accrued comp time upon termination must be paid the higher of the average regular rate received by the employee during the preceding three years or the final pay rate for the unused time. 29 U.S.C. §207(o).

Further, once an agreement to use comp time has been reached between the employer and employees, public employers may compel their employees to schedule and use their accrued comp time. Christensen v. Harris County, 529 U.S. 576 (2000). Although not required, all employers should put comp time agreements in writing and include a sentence authorizing the employer to control the employees' use of comp time.

The damages under the FLSA available to employees are potentially extremely high. The FLSA imposes fines of up to $10,000 for willful violations of the Act. 29 U.S.C. §216(a). Employers can be held liable for all unpaid compensation, mandatory liquidated damages (equal to the amount of the unpaid compensation), and attorneys' fees. 29 U.S.C. §216(b).

2. Family and Medical Leave Act of 1993 ("FMLA")

All local governments are covered by the Family and Medical Leave Act without regard to the number of persons employed. 29 C.F.R.

§825.108. To be eligible for FMLA leave, an employee must have worked for their employer for at least 12 months and have worked at least 1,250 hours during the 12 months prior to the start of the FMLA leave. 29 C.F.R. § 825.110. Eligible employees are entitled to an unpaid leave up to 12 work weeks during an employer's designated 12-month period for the birth and care of a newborn or newly adopted child; the placement of a son or daughter for adoption or foster care in the employee's home; to care for an employee's spouse, child or parent (but not in-law) with a serious health condition; or to care for one's own serious health condition that renders the employee unable to perform the functions of his job. 29 C.F.R. § 825.112.

Two new important military family leave entitlements have also been established for eligible specified family members. Those entitlements involve caring for a spouse, child, parent, or next of kin (the nearest blood relative) who is a covered military service member who is recovering from a serious illness or injury sustained in the line of duty; or because of any qualifying need arising out of a spouse, child, or parent on active duty or notified of an impending call to active duty in support of a contingency operation involving deployment to a foreign country. 29 C.F.R. 825.112.

The FMLA and its regulations set forth: who is entitled to leave; maintenance of health benefits during leave; job restoration after leave; requirements for notice and certification of the need for FMLA leave; and protection for employees who request or take FMLA leave. Additional details regarding the FMLA may be found in the Code of Federal Regulations at 29 C.F.R. Part 825.

3. Family Military Leave Act

Illinois has adopted the Family Military Leave Act, which requires an employer of 15 to 50 employees to provide up to 15 days of unpaid leave to an employee who is the spouse, parent, child, or grandparent of a person called to military service for more than 30 days. Employers of more than 50 employees must provide up to 30 days of unpaid leave. The number of days of leave provided to an employee because the employee's spouse or child is called to military service must be reduced by the number of days of leave provided to the employee under subdivision (a) (1) (E) of Section 102 of the Family and Medical Leave Act of 1993. Townships fall under the definition of "employer" according to the Act. Any employee taking this leave must be restored to the position he or she held prior to the leave or to a position with equivalent seniority status, employee benefits, pay, and other terms and conditions of employment.

An otherwise-eligible employee may not exercise the right to leave under this Act unless he or she has exhausted all accrued vacation leave, personal leave, compensatory leave, and any other leave that may be granted to the employee except sick leave and disability leave. 820 ILCS 151/1, *et seq*.

4. Equal Pay Act ("EPA")

The Equal Pay Act, enacted in 1963, prohibits sex-based wage discrimination between men and women. The EPA prohibits employers from paying unequal wages to employees of opposite sexes where jobs require equal skill, effort, and responsibility, and are performed under similar working conditions. 29 U.S.C. §206(d)(1). The EPA also prohibits sex-based discrimination in "fringe benefits." 29 C.F.R. §1620.11(b). Fringe benefits include "medical, hospital, accident, life insurance and retirement benefits, profit sharing and bonus plans, and other such concepts." 29 C.F.R. §1620.11(a). Damages under the EPA are the same as those under the FLSA. (See "FLSA" section in this chapter).

5. Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") and the Illinois Continuation Law

Congress adopted the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), which became effective July 1, 1986. The purpose of COBRA is to provide continuation of benefits for separated or retiring employees, widows, spouses, and dependent children of employees who are covered by a group health plan. The law specifically provides that any political subdivision of a state that receives federal public health service funds must provide continued coverage as set out in the Act, if the township maintains a group health plan. Illinois is such a state. The covered individual is entitled to pay for continued coverage at the same rates as the coverage cost. The employer is entitled to charge a small amount for administering the system. COBRA does not apply to public employees of cities which have fewer than 20 employees. However, under the Illinois Insurance Code, the Illinois Continuation Law provides that employers of any size must continue health care coverage to individuals and their dependents if the individual was continuously covered under group coverage for three months prior to separation. 215 ILCS 5/367e. Employees who were terminated for a work-related felony or work-related theft or who are covered by Medicare or any other group health insurance plan, are disqualified from coverage. This law also does not apply to employers who offer self-insured plans or are insured under self-insured health and welfare plans (union plans). Under the Illinois Continuation Law, a covered employer must notify the individual of eligibility upon

their separation, and the individual must request coverage within 10 days. This law also states that employees are responsible for the entire premium but that the premium may not exceed the group rate. Coverage only applies for nine months, which is about half of what is required under COBRA. Also, while under COBRA the benefits must be exactly the same, the Illinois law only requires that the coverage be the same but that extras, such as dental, vision, or prescription drug plans, need not be included.

6. Garnishment of Township Employees' Wages (Wage Deductions)

A township is obligated, under the provisions of the Wage Deduction Act, to pay a creditor a portion of the wages that it would otherwise have paid to its employee who was in the creditor's debt. The employer township may take a fee for its administrative costs. The amount allowed, however, is only two percent of the amount to be deducted, whichever is greater. 735 ILCS 5/12-814.

7. Prevailing Wage Act

Certain work performed for townships must be compensated at prevailing wage rates. 5 ILCS 370/1, *et seq*. An agreement by the employees to accept a lower salary will not free the township from the obligation to pay the minimum fixed by statute. George v. City of Danville, 383 Ill. 454, 50 N.E.2d 467 (1943). Under the Prevailing Wage Act, townships are required to pay laborers, mechanics, and other workers that are employed by or engaged in the construction or maintenance of public works at least the minimum of public rate of wage. 820 ILCS 130/1, *et seq.* Effective August 21, 2007, this section of the Act was amended to include any maintenance, repair, assembly, or disassembly work performed on equipment whether owned, leased, or rented. Under the Prevailing Wage Act, contractors and subcontractors are required to submit a certified payroll to the township by the fifteenth day of each calendar month. The certified payroll must only be filed for those calendar months during which construction on a public works project has occurred. These records become public records. 820 ILCS 130/5. The Department of Labor determines prevailing wages by County and makes them available on their website at www.state.il.us/agency/idol.

H. Employment Discrimination

1. Title VII of the Civil Rights Act of 1964 ("Title VII")

Title VII applies to all employers who employ fifteen or more employees for each working day in each of twenty or more calendar weeks per year. 42 U.S.C. §2000e(b). Title VII prohibits discrimination against employees based on race, color, national origin, ancestry, and religion. Title VII also prohibits retaliation against any employee who asserts his or her rights under Title VII. Although not explicitly defined or prohibited by Title VII, the prohibition of sexual harassment has also evolved out of Title VII, and gender-based discrimination is also being treated as prohibited conduct.

2. Illinois Human Rights Act ("IHRA")

The IHRA applies to governmental units without regard to the number of employees. 775 ILCS 5/2-101(B)(1)(c). The IHRA prohibits discrimination on the basis of race, color, sex, age, religion, national origin, ancestry, order of protection status, marital status, disability, unforeseeable discharge from military service, military status, sexual orientation, arrest record, citizenship status, or pregnancy. 775 ILCS 5/1-102.

3. Americans With Disabilities Act ("ADA")

The Americans with Disabilities Act ("ADA") was enacted in 1990. Since its enactment, a tremendous amount of litigation has ensued over the Act.

Title I of the ADA prohibits employers from discriminating against qualified individuals with disabilities because of the disabilities in all aspects of employment, such as job application procedures; hiring; promotions; discharge; employee compensation; employee benefits; job training; and other terms and conditions and privileges of employment. 42 U.S.C. §12112(a).

The ADA covers individuals (1) with mental or physical disabilities that substantially limit one or more major life activities of the individual, (2) with a record of having such a mental or physical disability, or (3) who are regarded as having such a mental or physical disability. The ADA does not cover elected township officials.

The ADA defines a "qualified individual with a disability" as "an individual with a disability who, with or without reasonable

accommodation, can perform the essential functions of the employment position." 42 U.S.C. §12111(8).

"Reasonable accommodation" is determined on a case-by-case basis and includes such workplace modifications as modification of work schedules, job restructuring, making facilities accessible to and usable by disabled employees, reassignments to vacant positions, and acquiring or modifying equipment or devices. A reasonable accommodation must be provided to a disabled employee upon request unless the requested accommodation poses an "undue hardship." "Undue hardship" is defined as "excessively costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the business."

The ADA, like most employment related statutes, is extremely complicated and contains many federal regulations. The abundance of cases that have flooded the court system serve as evidence that careful attention must be given to the ADA. All township officials and management level employees should be trained on the requirements of the ADA. Furthermore, the interplay between ADA and the FMLA has become an increasingly confusing area for many townships as these statutes must, many times, be considered together. Legal counsel is highly recommended when dealing with any employment-related statute.

Title II of the ADA prohibits disability discrimination with respect to public services. Title II imposes various requirements on State and local government units becoming "accessible" to individuals with disabilities where public services are involved. Public services include public libraries; township board meetings; public transportation that is provided by public entities; and any other public service.

The regulations that were enacted to assist in the implementation of Title II of the ADA can be found at 28 C.F.R. Part 35. Under the federal regulations, any public entity that employs 50 or more employees must designate at least one person to coordinate ADA compliance. 28 C.F.R. §35.107. Further, these public entities must adopt a grievance procedure for the prompt resolution of complaints under the ADA. 28 C.F.R. §35.107. State law requires that townships with an ADA coordinator must post on the township's website, the name, office address, and telephone number, if any, of the ADA coordinator, as well as a statement regarding the grievance procedure adopted by the township for resolution of alleged violations of Title II of the ADA. 60 ILCS 1/85-60(a). If the township does not maintain a website, the township must annually publish the information regarding the coordinator and the grievance procedure, or

instructions for obtaining that information, in either a newspaper of general circulation within the township or a newsletter mailed to residents. 60 ILCS 1/85-60(b).

4. Age Discrimination in Employment Act ("ADEA")

In 1994, the Age Discrimination in Employment Act of 1967 was amended to include units of local government. The ADEA prohibits discrimination in employment against any person over 40 years of age. 29 U.S.C. §621, *et seq.* However, if an employee over the age of 40 is replaced by an employee under the age of 40, but the age disparity between the employees is less than 10 years, this disparity is presumptively insubstantial. Hoffmann v. Primedia Special Int. Publ'n., 217 F.3d 522 (7th Cir. 2000).

Relevant to police officers and firefighters, pursuant to the enactment of the ADEA, in 1994 the State of Illinois dropped its under-35 restriction for new police officers. In 1996, however, Congress amended the ADEA to reinstate the exemption for state and local governments that had age-based restrictions for firefighters or law enforcement positions as of March 3, 1983. 29 U.S.C. §623(j)(1). Section 623(j)(1) states that it shall not be unlawful for a local government to refuse to hire someone as a firefighter or law enforcement officer on the basis of the applicant's age if the applicant has exceeded the maximum age of hire that the local government had in effect as of March 1983. Therefore, the 1995 amendment offers safe harbor for all states and public entities that had age limits in place in March of 1983. Kopec v. City of Elmhurst, 193 F.3d 894 (7th Cir. 1999).

I. Pensions and Retirement

1. Illinois Municipal Retirement Fund ("IMRF")

For purposes of participation in IMRF, persons holding elective office are deemed employees as well as others whose compensation is paid by the township. Elected officials, however, must elect, in a written notice while in office, to become a participating employee. 40 ILCS 5/7-109. Each participating employee is granted credits and creditable service for purposes of determining the amount of annuity or benefits to which he or she is entitled. 40 ILCS 5/7-139. The fund also pays disability benefits.

As of January 1, 2011, Illinois now has a two-tiered pension system that governs IMRF. 40 ILCS 5/1-160. Tier 1 applies to all employees hired before January 1, 2011, and Tier 2 applies to all employees hired on or after January 1, 2011. Tier 1 employees are deemed vested and qualify

for an unreduced pension at age 60 if they have at least 8 years of service credit or if at age 55, they have 35 or more years of service credit. Tier 2 employees are not considered vested until either age 67 with 10 years of service or at age 62 with 35 or more years of service. Under Tier 1, employees are eligible for early retirement and reduced benefits at age 55, which in most cases is a reduction of 1/4% for each month the employee is under age 60. Tier 2 increased the eligible early retirement age to 62 and changed the overall reduction rate to 1/2% for each month the employee is under age 67. Neither Tier 1 nor Tier 2 employees can convert unused, unpaid sick days to service credit to meet the eligibility requirements.

Townships and employees contribute to the fund. 40 ILCS 5/7-172, 5/7-173. An eight-member state board of trustees is elected to govern the fund. 40 ILCS 5/7-175. No person is eligible to become a trustee of the state board who does not have at least eight years of creditable service. The board administers the fund for the entire state. The board must invest any of the fund's assets that exceed the cash reserves that are required for current operation. 40 ILCS 5/7-195. Securities and investments which may be purchased or made by the board are described in 40 ILCS 5/7-201.

In Taddeo v. Bd, of Trs. of the Ill. Mun. Ret. Fund, 216 Ill. 2d 590 (2005), the Illinois Supreme Court considered whether or not a mayor who had previously served as a township supervisor should forfeit his pension accrued under both positions or just that of the mayor. The IMRF had removed the former mayor's entire pension upon his agreeing to a plea for certain felony offenses. The Illinois Supreme Court held that the individual was entitled to pension monies accrued while he was township supervisor because no evidence linked him to any crime while he was supervisor, and the IMRF treated the funds as separate. This reasoning applies to officials convicted of acts of official misconduct involving one office but not another. Grever v. Bd. of Trs. of the Ill. Mun. Ret. Fund, 353 Ill.App.3d 263 (2d. Dist. 2004).

These decisions, however, have been distinguished from a situation wherein one person holds several different offices at the same time; in this case, removing all pensions benefits accrued for all of the offices is proper. Wells v. Bd. of Trs. of the Ill. Mun. Ret. Fund, 361 Ill.App.3d 716 (2d. Dist. 2005).

In another pension decision the Illinois Supreme Court upheld the termination of all benefits for former Illinois Governor George Ryan, even though his felony federal convictions were related only to criminal

misconduct when he was governor and secretary of state. In Ryan v. Bd. of Trs. of Gen. Assembly Ret. Sys., 388 Ill.App.3d 161, 902 N.E.2d 1136 (1st Dist, 2009), the former governor sought administrative review of the General Assembly Retirement System's Board of Trustees' termination of his pension benefits. While the circuit court of Cook County affirmed the Board's decision, the appellate court held that the former elected official's conviction for illegal acts committed during his service as governor and secretary of state did not disqualify him from receiving benefits with respect to his prior public employment, that being with the Illinois General Assembly.

But the Illinois Supreme Court reversed the appellate court and affirmed the circuit court's ruling on the matter, saying that the various public offices Ryan held were all in service to "a single public employer - the State of Illinois." Ryan v. Bd. of Trs. of Gen. Assembly Ret. Sys., 236 Ill. 2d 315, 924 N.E.2d 970 (2010).

2. Medicare

In April of 1986, Congress passed Public Law 99-272, which mandated that employees hired by townships after March 31, 1986, be enrolled in the Medicare insurance system. Townships where employees participate in IMRF or Social Security were not greatly affected by this mandate because these programs include Medicare contributions. Those that did not, however, had to enroll newly-hired employees in the program. The State Department of Insurance can direct you to sources of information for details on meeting this federal requirement. New taxing authority has been added to the statutes so that townships without IMRF or Social Security taxing authority can generate revenue for contributions. 40 ILCS 5/21-110.1.

3. Social Security

By resolution of the corporate authorities or by referendum, township employees, officers, and elected and appointed officials not covered by any pension law or IMRF may be placed under the Social Security Enabling Act. 40 ILCS 5/21-101, *et seq.* In addition, IMRF pays a portion of the funds contributed to it into federal Social Security coverage. A portion of the Social Security contribution goes to the Medicare program so, if employees are contributing to Social Security, they are contributing to Medicare as well.

If the township elects Social Security coverage, a plan for coverage of the employees should be submitted promptly for approval to the Social

Security Unit of the State Employees Retirement System. This plan must provide that all services that constitute employment shall be covered; specify the sources of funds and reasonably assure them; contain a promise to deliver the proper funds to the agency; authorize the agency to terminate the plan if a failure to comply with any provision of the plan occurs; specify some officer to act as custodian of the funds; provide for the efficient administration of the plan; provide a satisfactory method of collecting contributions; and provide that the township will make reports as required by the agency.

The township must pay into the fund at the rate required by statute. Although the State still is involved in a township's entry into the system, since January 1, 1987, contributions are paid directly to the federal program. The federal program is authorized to impose contributions on employees and to deduct them from the employees' wages. Such contributions, when matched with an equal amount in township funds, are paid into the Social Security Contribution Fund.

J. CDL – Random Drug and Alcohol Testing Requirements

All operators of vehicles employed by townships who are required to hold a Commercial Drivers License (CDL) are subject to random drug and alcohol testing by approved substance abuse professionals. This regulation includes full- and part-time employees and elected officials. Failure to be enrolled in a CDL Random Drug and Alcohol Program is a violation of federal law and could result in a $10,000 fine.

An employee of a township or road district with a population of less than 3,000 operating a vehicle within the boundaries of the township or road district for the purpose of removing snow or ice from a roadway by plowing, sanding, or salting is waived from the requirements of this Section when the employee is needed to operate the vehicle because the employee of the township or road district who ordinarily operates the vehicle and who has a commercial driver's license is unable to operate the vehicle or is in need of additional assistance due to a snow emergency. 625 ILCS 5/6-507.

The Township Officials of Illinois administers a drug and alcohol testing program for its membership. If you are interested in participating in or learning more about the program, please call the TOI office at (866) 897-4688.

K. Collective Bargaining

Collective bargaining requirements are applicable to townships employing 5 or more employees at the time the petition for certification or representation is presented to the Illinois Labor Relations Board. An exception to this law is made for any township that has more than 5 employees where the total number of employees falls below 5 after the Labor Relations Board has certified a bargaining unit, 5 ILCS 315/20. For more information on collective bargaining requirements and other employment law matters, contact your township attorney. You may also download the Labor Law Handbook for Small Governments from www.ancelglink.com.

L. The Illinois Religious Freedom and Civil Union Act

Townships should also be aware of the requirements of the Illinois Religious Freedom and Civil Union Act which took effect on June 1, 2011. 750 ILCS 75/1, *et seq*. Townships that offer health insurance and other benefits should review their policies to ensure that they are in compliance with the law. This Act defines a “party to a civil union” as a person who has established a civil union pursuant to the Act. “Party to a civil union” means, and shall be included in, any definition or use of the terms “spouse,” “family,” “immediate family,” “dependent,” “next of kin,” and any other terms that denote the spousal relationship, as those terms are used throughout the law. 750 ILCS 75/10. The Act also provides that a party to a civil union is entitled to the same legal obligations, responsibilities, protections, and benefits as are afforded or recognized by the law of Illinois to spouses, whether they derive from statute, administrative rule, policy, common law, or any other source of civil or criminal law. 750 ILCS 75/20.

In addition to creating a legally recognized union for same and different gender couples (that is akin to, but not the same as, traditional marriage), the recognition of civil unions in the State of Illinois will likely impact provision of health insurance and possibly other employer-provided benefits, including townships that purchase health insurance in the market, self-insure, or those who are participants in various local governmental self- insurance pools or plans.

The provisions of the Civil Union Act will likely be interpreted to require that townships that offer health care benefit plans to spouses must also offer those same benefits, at the same terms, to parties to a civil union. Civil unions are available to parties who are the same or different genders. Although the statutory language itself protects only those

benefits "derived from statute, administrative rule, policy, common law or any other source of civil or criminal law," Illinois courts will likely interpret the Act to apply to provision of health insurance even though the provision of health insurance is not mandated by law.

Initially, a review of other states with similar statutes reveals that those statutes have been interpreted to require employers to provide health insurance to parties of civil unions to the same extent as spouses. Moreover, in the floor debates, members of the Illinois legislature specifically identified extension of health insurance benefits as a right afforded by the new Civil Union law. Although not part of the legislation itself, those statements of the legislators during the debates are—like the treatment given in other states—typically important to the courts when they decide how the Act should be interpreted and applied.

Additionally, Illinois courts may find that the Civil Union Act triggers certain protections in the Illinois Human Rights Act. 775 ILCS 5/1-101, *et seq*. The Illinois Human Rights Act prohibits discrimination based on marital status. Because the Civil Union Act grants the same protection to parties to civil unions as granted to spouses, courts may conclude that to give benefits to spouses but not to parties to civil unions violates the Human Rights Act.

The financial impact of this new Act on townships is difficult to estimate. First, some employers already offer benefits to domestic partners so that the impact in those instances will likely be negligible. Additionally, while the requirements and process for obtaining a civil union are similar to those of marriage, the Act also provides that dissolution of a civil union is governed by the Illinois Marriage and Dissolution of Marriage Act as well. 750 ILCS 5/101, *et seq*. This may or may not limit the number of people who participate in civil unions.

Employees who accept health insurance for civil union partners will also be economically impacted. Because the federal government does not recognize legal unions other than traditional marriage, the cost of health benefits to civil union partners that is paid for by the employer is taxable income for federal income tax purposes.

As when any new law takes effect that changes employer obligations, reviewing policies and procedures to ensure compliance is important. Most critically, policies and procedures on health insurance benefits that identify eligible dependents should include those who are parties to a civil union.

As with all new laws, no certainty exists as to how courts will determine its applicability. Therefore, townships should consider expanding benefits such as FMLA, VESSA, and certain military leave entitlements to include parties to a civil union. Despite the fact that many of these benefits are federally derived and some might argue are not encompassed by the Civil Union Act, the Illinois Human Rights Act may provide protection through its prohibition against discrimination based on marital status. Townships may not need to revise their policies and procedures specifically to include parties to civil unions as benefit eligible but should consider this option in the event of a request for benefits by a civil union participant. For additional information on how this new law may impact your township, contact your township attorney.

IX. TOWNSHIP ELECTIONS

Township offices are generally filled every four years in the consolidated election cycle. The next election of township officers will be in 2021 followed by 2025. Candidates for township office can run as independents, although most run as new or established political party candidates. Those candidates running in a political party are nominated either at a caucus or in a primary election. In all cases, the nomination papers for the candidate (or slate of candidates in the case of new political parties) must be filed with the township clerk. The State Board of Elections generally publishes a Township Caucus Guide and Candidate's Guide that all township officials and candidates, particularly the township clerk, should review prior to the election season.

A. Nomination Papers

Independent candidates, new political party candidates, and established party candidates running in a primary must file what are called nomination papers. Nomination papers generally consist of a statement of candidacy, petition sheets containing signatures and addresses of registered voters within the township, an optional loyalty oath, a receipt of filing for a statement of economic interests, and other forms specific to the office of township and multi-township assessors. While guidance on these forms and the signature requirements can be obtained from the Candidate's Guide and other documents published by State Board of Elections, courts have held that information in those publications cannot be relied upon as binding legal advice, and all candidates are therefore encouraged to obtain competent legal counsel before filing nomination papers.

Nomination papers must be filed within the statutory filing period at the times and place designated in a notice from the township clerk. The nomination papers are not valid unless the candidate named in the papers also files with the township clerk or the board of election commissioners, as the case may be, a receipt from the county clerk showing that the candidate has filed a statement of economic interests as required by the Illinois Governmental Ethics Act in relation to the particular candidacy in the township. See 5 ILCS 420/1-101, *et seq*. For a detailed discussion of information to be disclosed, filing deadlines, and penalties relating to the statement of economic interests, refer to Chapter XI, Section C, of this book.

Nomination papers filed on behalf of a candidate for the office of township or multi-township assessor are not valid unless the candidate named in the papers files with the township clerk or the board of election commissioners, as the case may be, proof of the candidate's qualifications as provided in Section 2-45 of the Property Tax Code. 60 ILCS 1/45-30, and discussed in Section D of Chapter II of this book.

B. Notice to Candidate to File Reports

The township clerk or board of election commissioners, as the case may be, must notify the person for whom such nomination papers are filed of the obligation to file statements of organization, timely reports of campaign contributions, and quarterly reports of campaign contributions and expenditures in the manner prescribed by the general election law. 60 ILCS 1/45-35. The State Board of Elections publishes a "D-5 Notice" containing all the required information, and that notice can either be handed to candidates when they file their nomination papers or may be mailed to them shortly thereafter. In the case of candidates for the office of township or multi-township assessor, the town clerk or board of election commissioners, as the case may be, must also notify those candidates of the obligation to file proof of their qualifications as provided in Section 2-45 of the Property Tax Code. In the case of candidates for the office of multi-township assessor, the notification must be made to a candidate for that office by the election authority. 60 ILCS 1/45-40.

C. Township Caucus

1. Nomination by Political Parties

The nomination of political party candidates for township offices are governed by Article 45 of the Township Code. As set forth below, most of those nominations are done by caucus. 60 ILCS 1/45-5, *et seq*. However, the township central committee of an established political party may opt to nominate by primary election rather than by caucus. If a township central committee elects this option, then a township's officials and residents do not have authority to dictate the method by which a township's political party selects its nominees because the express language of the Township Code places the decision in the hands of the township central committee, rather than in township officials or residents. *See* 60 ILCS 1/45-55; *Somer v. Bloom Township Democratic Organization*, 2020 IL App (1st) 201182, ¶ 19.

In such event, the township central committee must, no later than November 15 preceding the election, file with the county clerk a written

statement of intent to nominate by primary election. 60 ILCS 1/45-55. Thereafter, the provisions of the Illinois Election Code will govern the nomination of candidates by primary election. 10 ILCS 5/1-1, *et seq*.

2. Caucus Notice Requirements

On the first Tuesday in December preceding the date of the regular township election, a caucus must be held by the voters of each established political party in a township to nominate its candidates for the various offices to be filled at the election. 60 ILCS 1/45-10. In multi-township districts, a caucus must be held on the first Wednesday in December. 60 ILCS 1/45-25. Note that caucuses were previously held in January, but P.A. 97-0081, effective July 5, 2011, changed this and other pertinent caucus dates.

At least 10 days before it is held, notice of the caucus must be given by publication in a newspaper having general circulation in the township. Not less than 30 days before the caucus, the township clerk must notify the chairman or membership of each township central committee by first-class mail of the chairman's or membership's obligation to report the time and location of the political party's caucus. Not less than 20 days before the caucus, each chairman of the township central committee must notify the township clerk by first-class mail of the time and location of the political party's caucus. If the time and location of two or more political party caucuses conflict, the township clerk must establish, by a fair and impartial public lottery, the time and location for each caucus. If the chairman of the township central committee fails to meet the requirements of Section 10, the chairman's political party is not permitted to nominate a candidate, either by caucus or otherwise authorized by the Election Code, in the next consolidated election for any office for which a nomination could have been made at the caucus.

Except as provided above, the township board must cause notices of the caucuses to be published. The notice must state the time and place where the caucus for each political party will be held. The board must fix a place within the township for holding the caucus for each established political party. When a new township has been established, the county board must cause notice of the caucuses to be published as required by this section and must fix the place within the new township for holding the caucuses. 60 ILCS 1/45-10.

3. Caucus Procedures

The township central committee of the township, which is created for the purposes of the Township Code, must consist of (i) in all counties of 3,000,000 or less, the elected or appointed precinct committeemen of each established political party within the township or (ii) in counties of 3,000,000 or more, the elected or appointed township committeemen of each established political party. The committee, by a majority of those voting, must promulgate rules of procedure. 60 ILCS 1/45-15.

The rules of procedure for conducting a township or multi-township caucus must be approved by and may be amended by a majority vote of the qualified participants attending the caucus. No participant shall be able to participate or vote at any township or multi-township caucus if the person is or was at any time during the 12 months before the caucus any of the following:

1. An elected or appointed public official of another established political party;

2. An elected or appointed officer, director, precinct committeeman, or representative of the township committeeman of another established political party;

3. A judge of election under Article 13 or 14 of the Election Code for another statewide established political party; or

4. A voter who voted in the primary election of another statewide established political party different from the party holding the caucus. 60 ILCS 1/45-50.

The statute does not require verification of participants' eligibility prior to their entry into the caucus room, but compliance can be sufficiently established by requiring participants to sign affidavits specifically stating the statutory eligibility requirements and stating they are qualified primary electors eligible to participate in the caucus. Ferguson v. Ryan, 251 Ill. App. 3d 1042, 623 N.E.2d 1004, 191 Ill. Dec. 414 (3d Dist. 1993). Such affidavits of caucus participation are mandated by the Township Code. 60 ILCS 1/45-50(c)(3).

The caucus rules must be approved, and may be amended, by a majority vote of the qualified participants attending the caucus. Caucus rules must include the following:

1. No caucus shall commence earlier than 6:00 p.m.;

2. The caucus shall commence at the place specified in the notice of the caucus;

3. Procedures by which qualified caucus participants determine by a majority vote the duties of caucus judges of election. Caucus judges of election shall be appointed by a majority vote of the township or multi-township central committee. No judge of the Supreme Court, appellate court, or circuit court or associate judge shall serve as a caucus judge of election;

4. Nominations for selection as a candidate shall be accepted from any qualified participant of the caucus;

5. The method of voting (*i.e.,* written ballot, voice vote, show of hands, standing vote, etc.) for determining the candidate or candidates selected for nomination;

6. Whether candidates will be selected as a slate or as individual nominees for each office;

7. Whether written notice of intent to be a caucus nominee is required;

8. Other rules deemed necessary by the central committee at the time the rules are promulgated or by the majority of the qualified caucus participants when the rules are being considered at their meeting. 60 ILCS 1/45-50; and

9. A participant in a caucus shall be entitled to only one vote for each office for which he or she is voting. A participant's vote shall not be weighted to be equal to more than one vote.

Individuals participating in an established political party township or multi-township caucus must comply with each of the following:

1. A participant shall be registered to vote under Article 4, 5, or 6 of the Election Code;

2. A participant shall be registered to vote within the territory for which the nomination is made (*i.e.*, must be a resident of the township);

3. A participant shall sign an affidavit that he or she is a registered voter and affiliated with the established political party holding the caucus;

4. A participant shall not take part in the proceedings of more than one established political party township or multi-township caucus for the same election. This requirement also applies to the township and multi-township clerks;

5. A participant shall not sign a petition of nomination for an independent or new political party candidate for the same election; and

6. A participant shall not become an independent candidate or candidate of a new political party for the same election. 60 ILCS 1/45-50.

An individual's mere attendance at a political caucus or other peripheral activity, standing alone, does not preclude those individuals from thereafter filing for third party candidacy. McCarthy v. Streit, 182 Ill. App. 3d 1026, 538 N.E.2d 873 (1st Dist. 1989). However, a candidate seeking election to an office for which candidates of political parties are nominated by caucus who is an active participant in the caucus and who is defeated for his or her nomination at such caucus is ineligible to file a declaration of intent to be a write-in candidate for election in that general or consolidated election. 10 ILCS 5/18-9.1. As a general rule of thumb, a person who signs an affidavit of caucus participation is deemed to have participated in the caucus, as compared to someone else who was in attendance but did not sign the affidavit, did not vote for any candidates, and did not otherwise participate in the event.

The voters participating at a township or multi-township caucus shall not select for nomination more candidates than are to be elected for each office. 60 ILCS 1/45-50. No candidate for nomination at a township or multi-township caucus shall be required to either circulate and file nominating petitions or to pay any fee in order to become a candidate at the caucus. 60 ILCS 1/45-50. However, certain other nominating papers must be filed after the caucus has completed as described below. The costs of a caucus must be borne by the township. 60 ILCS 1/45-45.

The Township Code provisions that set out the detailed procedures for conducting township caucuses are directory, rather than mandatory, where provisions do not state that compliance with procedures is essential for the validity of the caucus and where provisions do not describe any consequence for failing to follow its provisions. Ferguson v. Ryan, 251 Ill. App. 3d 1042, 623 N.E.2d 1004 (3d Dist. 1993). Thus, failure to strictly comply is not fatal in absence of fraud or a showing that the merits of the election were affected. We advise, however, that this should not serve as a grant of carelessness. The rules should be followed to the maximum extent possible because, among other reasons, township residents can file legal challenges against the nomination papers that resulted from an improperly held caucus (*See* 10 ILCS 5/10-8).

4. Caucus Results – Filing Nomination Papers – Certifying Candidates

The township central committee must canvass and declare the results of the caucus. The chairman of the township central committee must, not more than 113 nor less than 106 days before the township election, file nomination papers. The nomination papers must consist of (i) a certification by the chairman of the names of all candidates for office in the township nominated at the caucus and (ii) a statement of candidacy by each candidate in the form prescribed in the general election law. The nomination papers must be filed in the office of the township clerk, except that if the township is entirely within the corporate limits of a city, village, or incorporated town under the jurisdiction of a board of election commissioners, the nomination papers must be filed in the office of the board of election commissioners instead of the township clerk. 60 ILCS 1/45-20.

5. The Lockout Rules

The lockout rules, as they are commonly known, are intended to protect the integrity of party nominations and to protect the electoral process from splintered parties and disruptive factionalism. Basically, these rules prevent someone who participated in the caucus and lost a nomination from turning around and running as an independent or as a new party candidate. As set forth below, note that both factors must be present (participation and a lost nomination) to trigger the lockout rules. For example, the lockout rules cannot be imposed against a person who lost a nomination at a caucus in which they did not participate or that they did not attend.

The Election Code, Section 7-61, states that a candidate seeking election to an office for which candidates of political parties are nominated by caucus who is a participant in the caucus and who is defeated for his or her nomination at such caucus is ineligible to be listed on the ballot at that general or consolidated election as a candidate of another political party. 10 ILCS 5/7-61. Section 17-16.1 has a similar restriction for write-in candidates. Similarly, Section 10-3 states a candidate seeking election to an office for which candidates of political parties are nominated by caucus who is a participant and who is defeated for his or her nomination at such caucus is ineligible to be listed on the ballot at that general or consolidated election as an independent candidate. 10 ILCS 5/10-3.

6. Caucus in Multi-Township District

On the first Wednesday in December preceding the date of any election at which township officers are to be elected, a caucus must be held by the voters of each established political party in a multi-township district to nominate its candidates for township assessor. For purposes of the Township Code, the multi-township central committee of each established political party must consist of the elected or appointed precinct committeemen of each established political party within the multi-township district and must promulgate rules of procedure.

The multi-township central committee of each established political party must cause notices of the caucuses to be published. The notices must state the time and place where the caucus for each established political party will be held within the multi-township district and must be published in a newspaper of general circulation in the district 10 days before the caucuses are held. Not less than 30 days before the caucus, the multi-township clerk must notify the chairman or membership of each multi-township central committee by first-class mail of the chairman's or membership's obligation to report the time and location of the political party's caucus. Not less than 20 days before the caucus, the chairman of the multi-township central committee must notify the multi-township clerk by first-class mail of the time and location of the political party's caucus. If the time and location of two or more political party caucuses conflict, the multi-township clerk must establish, by a fair and impartial public lottery, the time and location for each caucus.

The results of the election must be canvassed in the manner as provided by the general election law.

The chairman of the multi-township central committee must, not more than 113 nor less than 106 days before the multi-township election, file nomination papers for the candidates nominated at the caucus. The nomination papers must consist of (i) a certification by the chairman of the names of all candidates for office in the township nominated at the caucus and (ii) a statement of candidacy by each candidate in the form prescribed in the general election law. The nomination papers must be filed in the office of the election authority. The election must be conducted in accordance with the general election law. 60 ILCS 1/45-25.

D. Nomination by Primary Election

Although many townships nominate established party candidates by the caucus process, a primary election is possible in two scenarios. In (i) counties having a population of more than 3,000,000, the township central committee of a political party composed of the elected township committeeman and his or her appointed precinct committeemen and (ii) townships with a population of more than 15,000 in counties with a population of 3,000,000 or less, the township central committee of a political party composed of the precinct committeemen may, with respect to any regular township election, determine that its candidates for township offices must be nominated by primary in accordance with the general election law, rather than by caucus. If such determination is made, the central committee must file a statement of the determination with the county clerk no later than November 15 preceding the township election. If the township or any part of the township is within the jurisdiction of a board of election commissioners, the township central committee must promptly notify the board of election commissioners of that determination. Upon the filing of the determination by a township central committee, the provisions of the general election law shall govern the nomination of candidates of that political party for township offices for the upcoming election. 60 ILCS 1/45-55.

E. Nomination in Certain Other Cases

In addition to an established political party nominating township candidates, other candidates might appear on the ballot as well. These candidates run either as “independents” or as a slate of “new party” candidates. In either scenario, the individual bypasses the political party nominating process (whether by caucus or primary) and files nominating papers and petitions directly with the township clerk. See the State Board of Elections Candidate’s Guide for more information on these requirements.

1. Independent Candidates

Independent candidates are defined as those who are not candidates of any political party but who are candidates in an election at which party candidates may appear on the ballot. They are different than "nonpartisan" candidates, who are seeking office in elections in which political party candidates are prohibited. Independent candidates must file petitions containing a number of signatures not less than 5% nor more than 8% (or 50 more than the minimum, whichever is greater) of the total number of persons who voted at the last regular election in the township in which such township voted as a unit for the election of officers to serve the area.

Independent candidates must also file a statement of candidacy and a receipt of filing for a Statement of Economic Interests.

2. New Party Candidates

Individuals may also create a "new" political party (e.g., Township Good Government Party). In such a case, a full slate must run (*i.e.*, a candidate must be named for each township office up for election). If the new political party receives more than 5% of the votes cast at the election, it becomes an established political party within the township. If it does not receive more than 5%, it ceases to exist.

In addition to the nominating signature petitions, new party candidates must file (1) a statement of candidacy for each candidate; (2) a receipt of filing for the Statement of Economic Interests; and (3) a certificate stating the party officers authorized to fill vacancies in nomination. A loyalty oath may also be filed. New party candidates must file petitions containing a number of signatures not less than 5% of the total number of persons who voted at the last regular election in the township in which such township voted as a unit for the election of officers.

F. Objections to Candidates

Any voter in the township can object to a candidate's nomination papers and/or to the caucus nomination papers that are filed. 10 ILCS 5/10-8. The filing of such an objection starts a complicated legal process, and the clerk, who is at the center of the objection frenzy, must work closely with qualified legal counsel to ensure that the law is followed and everyone's rights are protected.

Objections are heard by the Township Electoral Board. This board hears the objections and consists of the town supervisor, the town clerk, and the town trustee with the longest continuous service. The township supervisor serves as chairman.[3]

G. Special Duties Relating to Voting

1. Absentee Voting

Every person who has met the statutory requirements of residency, citizenship, and age is entitled to vote at elections for all offices and propositions. 10 ILCS 5/3-1, *et seq.* In Illinois, voters are able to take advantage of multiple voting opportunities, including absentee and early voting. While historically to vote "absentee" one had to be absent from the election jurisdiction on Election Day, the law was recently changed to allow essentially any voter to take advantage of absentee voting. Now, any duly registered voter in Illinois may, by mail or electronically on the website of the appropriate election authority not more than 90 nor less than 5 days prior to the date of such election, or by personal delivery not more than 90 nor less than one day prior to the date of such election, make application to the county clerk or to the Board of Election Commissioners for an official ballot for the voter's precinct to be voted at such election. 10 ILCS 5/19-2. The application sets forth where the ballot is to be voted, residential information concerning the voter, and simply that the voter wants to vote by absentee ballot. 10 ILCS 5/19-3.

According to the above, essentially any township voter can take advantage of the absentee voting opportunities. However, the township has a role in providing these opportunities. At the consolidated primary, general primary elections, and consolidated and general elections, electors entitled to vote by absentee ballot may vote in person at the office of the township clerk if the elector is a resident of a municipality not having a board of election commissioners, or, in counties not under township organization, at the office of the road district clerk, provided that the township or road district clerk, as the case may be, is authorized to conduct in-person absentee voting procedures. 10 ILCS 5/19-2.1. Absentee voting is conducted from the 22nd day through the day before the election. 10 ILCS 5/19-2.1.

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[3] Often, at the time this book is published, bills are pending in the General Assembly that would change the manner in which candidate objections would be heard within certain units of government. Due to pending legislation and recent Public Acts, it is vitally important that township officers and candidates seek competent legal advice prior to preparing and filing their nomination papers.

Township clerks (or road district clerks) who have regularly scheduled working hours at regularly designated offices other than a place of residence and whose offices are open for business during the same hours as the office of the election authority must conduct in person absentee voting for said elections. Township clerks (or road district clerks) who have no regularly scheduled working hours but who have regularly designated offices other than a place of residence must conduct in-person absentee voting for said elections during the hours of 8:30 a.m. to 4:30 p.m. or 9:00 a.m. to 5:00 p.m., weekdays, and 9:00 a.m. to 12:00 noon on Saturdays, but not during such hours as the office of the election authority is closed, unless the clerk files a written waiver with the election authority not later than July 1 of each year stating that he or she is unable to conduct such voting and the reasons therefore. Such clerks who conduct in-person absentee voting may extend their hours for that purpose to include any hours in which the election authority's office is open. Township clerks who have no regularly scheduled office hours and no regularly designated offices other than a place of residence may not conduct in-person absentee voting for said elections. The election authority may devise alternative methods for in-person absentee voting before said elections for those precincts located within the territorial area of a municipality or township wherein the clerk of such municipality or township (or road district) has waived or is not entitled to conduct such voting. In addition, electors may vote by absentee ballot at the office of the election authority having jurisdiction over their residence.

In conducting absentee voting, the respective clerks are required to verify the signature of the absentee voter by comparison with the signature on the official registration card. The clerk must also reasonably ascertain the identity of such applicant, must verify that each such applicant is a registered voter, and must verify the precinct in which he or she is registered and the proper ballots of the political subdivisions in which the applicant resides and is entitled to vote, prior to providing any absentee ballot to such applicant. The clerk must verify the applicant's registration from the most recent poll list provided by the county clerk or if the applicant is not listed on that poll list then by telephoning the office of the county clerk.

Within one day after a voter casts an in-person absentee ballot, the appropriate election authority shall transmit by electronic means pursuant to a process established by the State Board of Elections the voter's name, street address, e-mail address, and precinct, ward, township, and district numbers, as the case may be, to the State Board of Elections. The State Board of Elections will maintain those names and that information in an

electronic format on its website, arranged by county and accessible to State and local political committees.

Absentee voting in the office of the municipal, township and road district clerks is subject to all absentee voting procedures. Pollwatchers may be appointed to observe in-person absentee voting procedures at the township clerk's offices where such absentee voting is conducted. Such pollwatchers must qualify and be appointed as provided by the Election Code, except each candidate, political party, or organization of citizens may appoint only one pollwatcher for each location where in-person absentee voting is conducted. Pollwatchers must be residents of the county and possess valid pollwatcher credentials. All requirements relating to absentee voting applicable to election authorities must apply to the respective local clerks.

The sealed absentee ballots in their carrier envelope must be delivered to the respective clerks or by the election authority on behalf of a clerk to the consolidated voting location before the close of the polls on the day of the general primary, consolidated primary, consolidated election, or general election.

Not more than 23 days before the nonpartisan, general, and consolidated elections, the county clerk must make available to those clerks conducting in-person absentee voting within such county a sufficient number of applications, absentee ballots, envelopes, and printed voting instruction slips for use by absentee voters in the offices of such clerks. The clerk must receipt all ballots received, must return all unused or spoiled ballots to the county clerk on the day of the election, and must strictly account for all ballots received.

The ballots delivered to the respective clerks must include absentee ballots for each precinct in the municipality, township or road district or must include separate ballots for each political subdivision conducting an election of officers or a referendum on that election day as will permit any resident of the municipality, township or road district to vote absentee in the office of the proper clerk.

The clerk may distribute applications for absentee ballots for the use of voters who wish to mail such applications to the appropriate election authority. Any person may produce, reproduce, distribute, or return to an election authority the application for absentee ballot. Upon receipt, the appropriate election authority shall accept and promptly process any application for absentee ballot. 10 ILCS 5/19-2.1.

2. Early Voting

In addition to absentee voting, Illinois also allows early voting. Under the early voting provisions effective June 1, 2015, registered voters can vote early during the 40th day through the end of the day before election day. 10 ILCS 5/19A-15. The election authorities must identify early voting sites by publication the week before it begins and once each week during such voting. Starting June 1, 2015, the election authority must also provide the State Board of Elections with a list of all early voting sites and the hours each site will be open at least ten days before the period for early voting begins. 10 ILCS 5/19A-25. In addition to the election authority being available for early voting, authorities may also establish permanent and temporary polling places in its jurisdiction. However, no permanent polling place for early voting shall be located within 1.5 miles from another permanent polling place, unless it is within a municipality with a population of 500,000 or more. 10 ILCS 5/19A-10.

On weekdays, permanent polling places must remain open beginning the 15th day before an election through the end of the day before election day from 8:30 a.m. to 4:30 p.m., or 9:00 a.m. to 5:00 p.m, except that beginning eight days before election day, a permanent polling place for early voting must remain open during the hours of 8:30 a.m. to 7:00 p.m., or 9:00 a.m. to 7:00 p.m.. On Saturdays and holidays, those polling places must be open from 9:00 a.m. to 12:00 p.m and on Sundays from 10:00 a.m. to 4:00 p.m. 10 ILCS 5/19A-15. There are no hour requirements for temporary voting places. 10 ILCS 5/19A-20.

Early voting is especially relevant to townships because the law provides that the election authority may request that a township make its public buildings available as permanent or temporary early voting polling places without charge. 10 ILCS 5/19A-21. The township must also ensure that any portion of the building made available is accessible to handicapped and elderly voters. *Id*. Further, the law allows the election authority to designate a township clerk (or road district clerk) to serve as the election official in charge of a polling place for early voting. 10 ILCS 5/19A-30.

H. General Election Laws – Applicability

The general election law applies to the conduct of all township elections and referenda except those held at an annual or special town meeting, which must be under the jurisdiction of the township clerk and rules covering the annual town meeting or a special town meeting. 60

ILCS 1/50-45. The manner of selection of township officers is prescribed by statute, and townships have not been granted the power to alter the method of selecting officers by referenda or otherwise. Op. Att'y Gen. (Ill.) 00-009 (2000). For purposes of election of township officers and referenda, "voter" or "legal voter" means a person qualified and registered to vote under the general election law. "Certify" and "certification," when used in connection with election of officers or referenda, refer to the certification, in accordance with the general election law, of officers, candidates, or propositions to county clerks and boards of election commissioners for inclusion on the ballot at an election. "Submit" and "submission," when used in connection with a referendum on a proposition or question, refer to the submission to the voters, in accordance with the general election law, of the proposition or question by county clerks and boards of election commissioners. 60 ILCS 1/50-45.

I. Canvassing

As soon as complete returns are delivered to the proper election authority, the returns are canvassed for all primary elections. 10 ILCS 5/7-56. The Election Code specifies that the canvass of votes cast at the consolidated elections must be conducted by the election authorities within 21 days after the close of such elections. 10 ILCS 5/22-17 (See 10 ILCS 5/1-8 for discussion of election authorities). In most counties, the election authorities will be the county clerks. Some municipalities in Illinois, such as Chicago, DuPage County, Rockford, East St. Louis, Aurora and Galesburg, are large enough to have their own election authorities. For townships within the territory of both a county and city election authority, the election authority with jurisdiction over the location of the township's primary office governs. 10 ILCS 5/1-8. See: http://www.elections.il.gov/ElectionAuthorities/ElecAuthorityList.aspx for a complete list of election authorities in Illinois. Section 22-17 of the Election Code specifies that the canvass of votes cast at the consolidated elections must be conducted within 21 days after the election.

J. Referenda

Any group of registered voters may request an advisory question of public policy for consideration by the electors at the annual meeting by giving written notice of the specific advisory question to the township clerk in the same manner as required for an agenda item under subsection (b) of Section 30-10. The agenda published by the township board shall include any such advisory question if the request is timely filed. By a vote of the majority of electors present at a town meeting, the electors may

authorize that an advisory question of public policy for which notice has been given be placed on the ballot at the next regularly scheduled election in the township. The township board must certify the question to the proper election officials, who shall submit the question to the voters in accordance with the general election law. 60 ILCS 1/30-205.

A township board may also vote to put an advisory question on the ballot. 60 ILCS 1/80-80. Other parts of the Township Code require specific projects or financing to be approved via referendum (e.g., township open space programs pursuant to Section 115-20). Although townships are normally predisposed to be in favor of the referendum questions they put on the ballot, the law prohibits taxpayer money from being spent to support or oppose any referendum question. The question is therefore often asked what, if anything, a township can do in regard to a referendum.

1. What Public Bodies Can and Cannot Say

The prohibition on using public money to support or oppose public questions derives from a multitude of sources. First and foremost, Article VIII, Section 1(a) of the Illinois Constitution prohibits the expenditure of public funds for private purposes. This restriction is codified in the Election Code as follows:

> No public funds shall be used to urge any elector to vote for or against any candidate or proposition, or be appropriated for political or campaign purposes to any candidate or political organization. 10 ILCS 5/9-25.1(b).

Violating this law is a Class B misdemeanor, and subsequent violations are Class A misdemeanors. Also, the State Officials and Employees Ethics Act, made applicable to units of local government through 5 ILCS 430/70-5, requires governing boards to adopt an ordinance that prohibits the use of public funds for all types of political activities, including campaign strategizing, petition checking, referendum polling, and the preparation of campaign literature. Accordingly, a public body cannot use public funds to support or oppose any referendum. Additionally, each governmental unit must adopt an ordinance or resolution establishing a policy to prohibit sexual harassment.

Despite the prohibitions outlined above, the Election Code, Section 9-25.1(b) does specifically permit public bodies to use public funds to

disseminate “factual information” relative to a proposition appearing on an election ballot. 10 ILCS 5/9-25.1(b). The challenge is therefore navigating the fine line between what information is factual and what crosses the line into political advocacy.

Because of the strict rules that govern the expenditure of public funds, officials who wish to remain out of trouble with the law are well-advised to take the most conservative course possible and maintain a strict wall of separation between providing factual information and promoting the referendum.

2. Registration Requirements

In a 2009 case, the appellate court held a public body that spends in excess of $3,000 on communications that refer to a public question must register as a political committee with the State Board of Elections. *Citizens Organize to Save the Tax Cap v. Northfield Township High School District Number 225, et al.*, 910 N.E.2d 605 (1st Dist. 2009). After the ruling, confusion resulted as public bodies struggled to determine what, if anything, they could or should do if they have a referendum question on the ballot. Since that case, new legislation took effect that alleviates the registration requirements and appears to put public bodies back on solid ground.

Under the law, including both the current and former versions of the Election Code, any person or organization that spends in excess of $3,000 on electioneering communications or other political activities is required to register as a political committee with the State Board of Elections. When the Northfield case was decided, however, the Election Code defined “electioneering communication” as any communication that simply “refers” to a public question. Thus, in Northfield, the court held even factual information disseminated by a public body qualified as electioneering communications. Thus, a school district that had spent over $3,000 on printed brochures had to register. However, effective July 1, 2010, the definition of electioneering communications was changed to mean:

> …any broadcast, cable, or satellite communication, including radio, television, or Internet communication, that (1) refers to (i) a clearly identified candidate or candidates who will appear on the ballot for nomination for election, election, or retention, (ii) a clearly identified political party, or (iii) a clearly

> identified question of public policy that will appear on the ballot, (2) is made within (i) 60 days before a general election or consolidated election or (ii) 30 days before a primary election, (3) is targeted to the relevant electorate, and (4) is susceptible to no reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate for nomination for election, election, or retention, a political party, or a question of public policy. 10 ILCS 5/9-1.14(a).

Under the current law, print materials are not expressly included in the definition of "electioneering communication." However, beware that the "election interference" statute cited above, with misdemeanor criminal penalties for violations thereof, does *not* exclude print materials from the prohibition against spending public funds to support or oppose candidates and referenda. 10 ILCS 5/9-25.1. Regardless, if the public body's printed and electronic communications simply disseminate factual information about a referendum question and do not "urge any elector to vote for or against" a candidate or question of public policy, such statements will not qualify as "electioneering communication" and the public body will not be guilty of "election interference." Accordingly, a public body's expenditure for the dissemination of unbiased factual information should no longer trigger registration requirements. However, if the township exceeds $3,000 in expenditures for communications that could be interpreted as an appeal to vote for or against a referendum, people may argue that the township must register with the State Board of Elections to form a political committee. They may also argue the municipality is in violation of Section 9-25.1(b) of the Election Code and related laws that prohibit public funds from being used to urge a vote for or against a referendum or candidate.

K. Certification of Candidates by the Township Clerk

The township clerk shall certify the candidates to the proper election authorities not less than 68 days before the township election. 60 ILCS 1/45-20.

X. TOWNSHIP FINANCIAL ISSUES

A. Budget and Appropriation Ordinance

1. Townships

Township boards exercise their authority to expend public funds by adopting a budget and appropriations ordinance, which brings together revenues from taxes and other sources that will be allocated to various expenses. Very simply, the budget and appropriations ordinance establishes how the township proposes to spend public money, but it also serves as a controlling device for expenditures and as a collection-measuring device for revenues. A budget and appropriations ordinance is sometimes referred to as a "B and A" ordinance.

a. Time for Adoption

Within or before the end of the first quarter of each fiscal year, the township board shall adopt a combined annual budget and appropriations ordinance, appropriating such sums of money as may be deemed necessary to defray all necessary expenses and liabilities of the township. The annual budget and appropriation ordinance shall specify the objects and purposes for which such appropriations are made and the amount appropriated for each object or purpose. The township may pass a continuing annual budget ordinance and may expend funds during the first quarter of the fiscal year before the township has adopted the combined annual budget and appropriation ordinance. 50 ILCS 330/3.

b. Required Information

The budget included in such ordinance shall contain a statement of the cash on hand at the beginning of the fiscal year, an estimate of the cash expected to be received during such fiscal year from all sources, an estimate of the expenditures contemplated for such fiscal year, and a statement of the estimated cash expected to be on hand at the end of such year. The estimate of taxes to be received may be based upon the amount of actual cash receipts that may be reasonably expected by the township during such fiscal year, estimated from the experience of the township in prior years and with due regard for other circumstances that may substantially affect such receipts. 50 ILCS 330/3.

c. Tentative Ordinance and Its Adoption

At least 30 days before the public hearing discussed below, the township board must prepare or cause to be prepared a tentative budget and appropriation ordinance and file the ordinance with the township clerk. The township clerk must make the tentative budget and appropriation ordinance available for public inspection for at least 30 days before final action on the ordinance. At least one public hearing must be held on the tentative ordinance on or before the last day of the first quarter of the fiscal year before the township board. Notice of the hearing must be given by publication in a newspaper published in the township at least 30 days before the time of the hearing. If no newspaper is published in the township, notice of the public hearing may be given by posting notices in 5 of the most public places in the township. 60 ILCS 1/80-60. Such notice shall state the time and place where copies of the tentative budget and appropriation ordinance are available for public inspection and the time and place of the hearing. 50 ILCS 330/3. The duty of the township clerk is to arrange for the public hearing. The township board at the public hearing may adopt all or part of the tentative budget and appropriation ordinance as the township board deems necessary. 60 ILCS 1/80-60.

Once adopted, the ordinance must be filed with the county clerk within 30 days of adoption. 35 ILCS 200/18-50. Failure to file gives the county clerk authority to refuse to extend the tax levy until the documents are filed, although it will not affect the validity of a tax levy otherwise in conformance with the law. 35 ILCS 200/18-45, 50; 50 ILCS 330/4. Note that the budget and appropriation ordinance may not be adopted at the annual town meeting in April (although it may be adopted at a separate meeting held in conjunction with the annual meeting so long as the annual meeting is adjourned). See 60 ILCS 1/80-60.

d. Transferring Funds and Amending a Budget

Except as otherwise provided by law, no further appropriations shall be made at any other time within the fiscal year, provided that the township board may from time to time make transfers between the various items in any fund in such appropriation ordinance not exceeding in the aggregate ten percent of the total amount appropriated in such fund by such ordinance. Town boards may transfer funds received by the taxing district as the result of an erroneous distribution of property taxes by a county treasurer back to that county treasurer without amending the budget and appropriation ordinance. Townships may amend the budget and appropriation ordinance from time to time by the same procedure as is

provided for the original adoption of a budget and appropriation ordinance, provided that no transfers between funds required by law to be kept separate occur. 50 ILCS 330/3.

e. Other Considerations for Drafting the Ordinance

Beyond the above mandatory requirements set out in 50 ILCS 330/3, the township is given significant discretion as to the contents and details comprising the budget. However, township officials should note that the safest, smartest, and most desirable approach to drafting a budget is including a line-item breakdown for all anticipated expenses. The level of itemization necessary for a township budget is not certain; however, two Illinois cases have weighed in on the subject. In Voss v. Chicago Park Dist., 392 Ill. 429, 64 N.E.2d 731 (1946), the Illinois Supreme Court held that "[a] taxpayer has the right to have separately stated and itemized the several purposes for which public money is appropriated or taxes levied but such itemization requirement must be accorded a common sense construction." However, every item that may be paid out need not be specified in the appropriation, and a single expenditure purpose may include many individual items. *See* People ex rel. Toman v. Sage, 375 Ill. 411, 31 N.E.2d 791 (1940).

The line-item budget provides the format that best addresses the detail required by the courts and the responsibility demanded by the electorate. When drafting a budget and appropriation ordinance and deciding how detailed to make it, township officials should consider that local governments are under increasing scrutiny of citizens, media, and special interest groups. Fully complying with the mandatory provisions is imperative, therefore, and increasing detail is important to demonstrate fiscal responsibility and dedication to serving the public.

Sample ordinances are available for download at www.toi.org. For more specific questions regarding drafting the ordinance and developing a strategic plan, township officials should consult their attorney.

f. Quick Reference - Township Budget and Appropriations Ordinance Steps

The township board shall within or before the end of the first quarter of each fiscal year (June 30 for most) adopt a combined annual budget and appropriation ("B and A") ordinance.

Step 1: The township board must at least 30 days before the public hearing required by Section 3 of the Illinois Municipal Budget Law prepare or cause to be prepared a tentative B&A ordinance and file the ordinance with the township clerk.

Step 2: The township clerk must make the tentative B&A ordinance available for public inspection at least 30 days before final action on the ordinance. The required public hearing must be held on or before the last day of the first quarter of the fiscal year before the township board.

Step 3: Notice of the hearing must be by publication in the township at least 30 days prior to the time of the hearing. If no newspaper is published in the township, notice of such public hearing may be given by posting notices in 5 of the most public places in the township.

Step 4: The duty of the township clerk is to arrange for the public hearing. The township board at the public hearing may adopt all or part of the tentative B&A ordinance, as the township board deems necessary.

Step 5: The township board must file a certified copy of the adopted B&A ordinance with the county clerk. 50 ILCS 330/3; 60 ILCS 1/80-60.

2. Road Districts

a. General provisions

The Illinois Municipal Budget Law, 50 ILCS 330/3, requires that the highway commissioner in each road district in each county having adopted township organization shall, at least 30 days prior to the public hearing, prepare a tentative budget and appropriation ordinance and file the same with the clerk of the township or consolidated township road district, as the case may be, who shall make the tentative budget and appropriation ordinance conveniently available to the public for inspection at least 30 days prior to final action. One public hearing shall be held on or before the last day of the first quarter of the fiscal year before the township board of trustees or the highway board of trustees, as the case may be. Notice of the hearing shall be given by publication in a newspaper published in the road district at least 30 days prior to the time of the hearing. If no newspaper is published in the road district, notice of the public hearing shall be given by posting notices in 5 of the most public places in the district. The clerk of the road district is responsible for arranging for the public hearing. The township board of trustees or highway board of trustees, as the case may be, at the public hearing shall

adopt the tentative budget and appropriation ordinance, or any part as the board deems necessary. 605 ILCS 5/6-501(c).

b. Quick Reference - Road District Budget and Appropriations Ordinance Steps

The township board shall within or before the first quarter of each fiscal year (June 30 for most) adopt a combined annual B&A ordinance.

Step 1: The highway commissioner at least 30 days prior to a public hearing shall prepare or cause to be prepared a tentative B&A ordinance and file the same with the clerk of the township.

Step 2: The township clerk shall make the tentative B&A ordinance conveniently available to the public for inspection for at least 30 days prior to final action.

Step 3: Notice of the public hearing shall be given by publication (see details above), and the duty of the clerk of the road district (township clerk) is to arrange for the public hearing.

Step 4: The township board shall adopt at the public hearing the tentative B&A ordinance, or any part as the board deems necessary.

Step 5: The highway commissioner must file a certified copy of the adopted B&A ordinance with the county clerk. 605 ILCS 5/6-501(c).

Budget and appropriations ordinance forms are available on the TOI website at www.toi.org.

B. Capital Fund

Townships and road districts may accumulate monies for specific capital improvement projects and equipment. 60 ILCS 1/235-5(9). However, when so doing, townships and road districts must list the following items in a budget and appropriation ordinance when utilizing this statutory mechanism to accumulate funds for a capital project or equipment purchase: 1) the amount of money being dedicated for the project/equipment; 2) the purpose of the dedication; and 3) the duration of the accumulation of funds. 60 ILCS 1/235-5(9).

C. Townships and Road District Levies

1. Purposes

A levy is the amount of revenue (in dollars) that a township expects to receive through the taxation of real estate. The principal function of the levy is to fund that portion of the budget not funded by other sources and may be for the following purposes:

- Prosecuting or defending suits
- Maintaining cemeteries
- Maintaining hospitals
- Operating a committee on youth
- Providing mental health services
- Operating a committee for senior citizen services
- Specific construction and equipment
- Other purposes authorized by law. 60 ILCS 1/235-5.

2. Truth in Taxation

Under Illinois law, the township must adhere to certain procedural requirements before it can pass any tax levy ordinance. If a township expects to adopt an aggregate levy in excess of 105% of the amount of taxes extended in the prior year, it must give public notice of that fact through a newspaper and also hold a public hearing regarding that intent. Debt service (bonds), the permanent road fund, and election costs are not included in the 105% determination. 60 ILCS 1/235-13; 35 ILCS 200/18-70. The notice, which must follow a statutory form, must state the amount of property tax extended by the township during the previous year; the amount proposed for levy for the current year; the percent increase; the date, time and location of the hearing; the amount of prior and requested debt service; and the total of all taxes to be extended and the percent change therefore. Notice requirements and other truth-in-taxation requirements are precise; therefore, persons involved must read the statute carefully or consult an attorney before adopting a

levy in excess of 105% of the prior year's levy. *See generally* 35 ILCS 200/18-55 to 100.

a. The Procedure

Five steps are associated with a truth in taxation procedure:

1. The township must determine the amount of money, exclusive of election costs, to be raised by the property tax levy at least 20 days prior to adopting the new levy ordinance. This estimate should be announced and approved at a board meeting. 35 ILCS 200/18-60. The estimate of levy is frequently made in the form of a resolution, which, if necessary, also officially calls the requisite public hearing. At the very least, the minutes of the township must reflect when the estimate of levy is determined and made publicly available.

2. The township must hold a public hearing prior to passing a new tax levy ordinance that is estimated to be greater than 105% of the preceding year's levy.

3. The township must provide notice of the hearing in a newspaper at least seven but no longer than fourteen days before the hearing date. The newspaper must be of general circulation within the township, and the notice may not be published in the portion of the newspaper reserved for legal notices and classified advertisements. Any notice which includes any information not specified and required by the Act shall be an invalid notice. 35 ILCS 200/18-75; 35 ILCS 200/18-80.[4] We strongly recommend that the township legal counsel review the form of the notice prior to publication to ensure that it is in compliance with statutory provisions.

4. At the hearing, the board must explain the reasons for the proposed increase and permit individuals the opportunity to present testimony within reasonable time limits set by the board. After the hearing, the township also may conduct any other business provided for on the agenda posted in compliance with the Open Meetings Act. *However,*

[4] Nonetheless, if the Township finds it important to explain a proposed increase, it may publish a separate, companion notice with a brief explanation.

hearings on the tax levy increase and proposed budget cannot coincide. 35 ILCS 200/18-70. Regardless of whether the township conducts its regular monthly meeting in conjunction with the Truth in Taxation hearing, it is recommended that the township publish the Truth in Taxation notice separately and independently from any regular or special meeting agenda. The final levy ordinance may be adopted at the same meeting during which the township holds the public hearing.

5. At the time the township files its tax levy ordinance with the county clerk, it must also file a certificate signed by the township supervisor that certifies that there has been compliance with the requirements of the Act or that the Act is inapplicable. 35 ILCS 200/18-90. The ordinance must be filed by the last Tuesday in December. Due to the proximity of the deadline to many holidays, personnel should double check with the county clerk's office regarding the hours of operation at that time of year.

b. Public Notice of Levy in Excess of Estimate

The township board must give public notice within 15 days after adopting the tax levy ordinance when the levy, exclusive of election costs, is:

- more than 105% of the amount extended or estimated to be extended upon the final levy of the preceding year; and
- in excess of the amount posted in the original notice; or
- no pre-hearing notice was provided. 35 ILCS 200/18-85.

Also note that failure to file the certification of the supervisor or highway commissioner asserting that the Truth in Taxation provisions have been followed authorizes the county clerk to not extend revenue in excess of 105% of the previous year. 35 ILCS 200/18-90. As this is a complicated area of law, for further information visit www.toi.org or contact a township attorney.

3. Filing

The township's levy ordinance must be adopted by the township board and filed with the county clerk before the last Tuesday in December

of each year. 35 ILCS 200/18-15. The road district's levy is first determined by the highway commissioner and then adopted by the township board (which may not amend the commissioner's levy request), also by the last Tuesday in December. 605 ILCS 5/6-201.1; 605 ILCS 5/6-501[5]. These filings must include 1) a Certification of Tax Levy Ordinance; 2) a Tax Levy Ordinance; and 3) a certification by the Township Supervisor that the Truth-in-Taxation provisions (discussed below) are followed. 35 ILCS 200/18-90.

4. Collection of Taxes

The taxes are generally not collected until the following fiscal year, except for those townships in counties that have adopted early tax distribution procedures (e.g. Cook County). Distribution procedures vary from county to county, however. Township boards should be aware that a township will not always get what it levies, as explained further below.

5. Tax Increase Referenda

This section addresses the inevitability that from time to time most governmental bodies will require increases in real estate taxes.

For non-home rule local governments, including townships, real estate taxes are the source of a large percentage of total governmental income. Increases in fees or other charges that shift the cost of public services to those who most directly use and benefit from them are not as likely to produce sufficient funds to solve a revenue shortfall. In addition, the law in Illinois prohibits all governments from charging fees that are principally intended to produce revenue and that do not bear a reasonable relationship to the actual cost of the governmental regulation or service being provided. Given that fact, non-home rule governmental bodies such

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[5] NOTE: One-half of the tax required to be levied pursuant to Section 6-501 of the Highway Code, on the property lying within a municipality in which the streets and alleys are under the care of the municipality, shall be paid over to the treasurer of the municipality, to be appropriated to the improvement of roads or streets, either within or without the municipality and within the road district under the direction of the corporate authorities of the municipality. However, when any of the tax is expended beyond the limits of the municipality it shall be with the consent of the highway commissioner. If any municipality has not appropriated the taxes received by it as aforesaid for the improvement of roads or streets within one year from the date of the receipt thereof, then the unappropriated portion of such taxes shall be paid by the municipal treasurer to the road district treasurer, to be used for road purposes within the road district. 605 ILCS 5/6-507.

as townships must from time to time have available some mechanism for raising real estate taxes.[6]

For many years, a request for the approval of a tax rate increase was a relatively straight-forward process. As highlighted in this section, increases in the government's standard tax levy have become quite complicated in the counties in the State where the so-called "tax cap" is in effect.[7] This section begins with a discussion of requests for real estate tax increases in non-tax cap counties and then examines the ever-increasing complications brought about by the 2006 amendments to the tax cap law.

a. Tax Rate Increases in Non-tax Cap Counties

In non-tax cap counties, governmental bodies, once created, are automatically granted initial authorized tax rates. As an example, the beginning authorized tax rate for a township library is 0.15%. These percentages are translated into cents per one hundred dollars of equalized assessed valuation. Most governments, upon being organized, are granted these starter rates in most or all of their fundamental operating funds to support their basic provision of services. The governments can seek voter approval to raise these basic rates in each of these funds up to maximum levels established by statute.[8] Once a tax rate is approved or increased by referendum, it can generally be accessed by the governmental body through its entire existence. It may choose not to levy an authorized rate for a certain number of years and later decide to levy for that fund up to the maximum authorized rate when there is a need for money for that particular function.

A tax levy ordinance states the amount the governmental body seeks under various authorized funds. What makes the whole process somewhat confusing is that the levy of a governmental body is not expressed in rates

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[6] This section does not deal with an increase in real estate taxes that fund a multi-year commitment to pay off bonds, which are typically used either for the construction of public buildings and other facilities or for the ongoing provision of some governmental service that requires a capital expenditure to get the service started. Referenda relating to bonds are subject to their own set of rules.

[7] The "tax cap" is set forth in the Property Tax Extension Limitation Law, 35 ILCS 200/18-185, *et seq*. (the "Tax Cap Law").

[8] For a complete list of all tax rates applicable to your taxing district, please consult with the 2010 Illinois Property Tax Rate and Levy Manual which is available from the Illinois Department of Revenue at http://www.revenue.state.il.us/Publications/LocalGovernment/PTAX-60.pdf .

but in dollars.[9] When the County Clerk's office receives the levy of a governmental body, it reviews the maximum tax rates that the governmental body is allowed to levy and multiplies those rates by the equalized assessed valuation of all property within the governmental body. If the amount of money requested in the tax levy ordinance can be produced by multiplying the particular government's authorized rates against its equalized assessed valuation, the county clerk will levy up to that amount. If the levy exceeds the amount authorized to be extended by the Clerk, the maximum authorized rate will be extended, but the actual dollars received will be less than those asked for in the levy ordinance. In non-tax capped counties, this analysis is performed on a tax-by-tax basis but not on the aggregate amount requested for all of the Township taxes.

In some counties, the Clerk will add a small additional sum to the extension for "loss and costs" so that even if there is a delinquency regarding the payment of some taxes, the governmental body will receive the amount that it anticipates receiving for its levy. Some litigation over the ability of county tax extension officials to add this supplemental amount to levies and the appropriate factor to utilize has occurred. In those few governmental bodies that have a history of substantial tax delinquencies, the government will not receive the requested amount of dollars, even within its levying powers, until the delinquent properties have been sold for back taxes and the funds are paid over to the community. If your governmental body has been unlucky enough to experience substantial defaults in tax payments, you need to evaluate some special problems with your attorney.

Also, a number of specific levies are authorized for all governmental bodies without a maximum rate. Examples of such levies are for tort immunity and IMRF employer contributions. Historically, these levies have not been limited because they involve expenditures over which the governmental body has little control. Amounts levied for these funds, however, cannot be used for other purposes. In non-tax capped counties these unlimited levy funds are still capable of being funded up to the amounts needed. As a result, while the governmental body is protected against mandated costs, it cannot use these levies to produce surpluses available for other purposes.[10] More will be said about the use of these

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[9] The purpose for using rates to express the maximum tax permitted to be collected is to provide for consistency and proportionality between parcels which have different sizes and property values.

[10] Misuse of these unlimited taxes has resulted in court decisions declaring a misappropriation of funds and a resultant refund of property taxes.

levies in the section relating to governmental bodies in tax capped counties. In that case, the new statutes allow some interesting new techniques to be used if your government has surplus funds derived from these unlimited levies.

In non-tax capped counties where property values continue to increase, many governments are able to deal with inflationary costs without requiring tax rate increases by capturing the automatic growth of tax dollars in concert with appreciation in property values and new development. That is because, in the absence of a tax cap, a governmental body is allowed to convert the full value of new growth and a higher EAV into tax revenue by simply multiplying its existing tax rate against a larger tax base. The rate of growth in the tax base is affected in part by the frequency with which existing property is reassessed, especially since values tend to see the greatest increase during reassessment years.

Let us present an example of how reassessed and new property being added to the tax roll can help a township. In our example, real estate within a township averages an 8% increase in assessed value each year. That township would expect an 8% increase in tax revenue even with no change in its tax rate.

Governmental bodies in non-tax capped counties will continue to operate under relatively simple rules. Their rates, except for certain unlimited ones, will only be increased by voter approval. Once a rate is established it, along with all other allowable rates, is eligible to be multiplied each year against what may be an ever-increasing assessed valuation. If the governmental body “balloon levies” and assessments go up, it may receive dramatically increased revenues, and the taxpayers may be obligated to pay ever-increasing taxes. In a situation where property values increase faster than inflation, governments that continue to increase their levies have the ability to seek and receive revenues that will more than cover inflationary effects on their operating expenses. Under those circumstances, the mere fact that the assessed valuation of property increased should not automatically allow the taxing body to increase the owner’s real estate taxes in an amount greater than the cost of living. This decision led to the establishment of the tax cap, which requires citizens to approve expansions in governmental services that almost always require more tax dollars.

b. The Levy of Taxes in Tax Capped Counties

To some extent, the "tax creep" described above was the reason why, in urban counties experiencing substantial EAV growth, political pressure was asserted to impose a tax cap. Many people whose property became more valuable, especially senior citizens, argued that they should not be forced to pay more taxes simply because their property had, theoretically, become more valuable, especially since they were not seeking any additional municipal services. As a result of such concerns over unchecked revenue increases that went on year after year without voter approval, the General Assembly in 1991 imposed in the Collar Counties a tax cap.[11] The practical effect of the legislative tax cap was to prevent the governmental body from receiving the regular increase in tax dollars that resulted from the application of an established, level tax rate against an ever-growing property assessment. The intent of the tax cap legislation was to require governments that needed significant additional funds to ask their voters either for an increase in one or more of the then-current tax rates or to seek, as was allowed by statute, a one-year reprieve from the limit on percentage increases in revenue growth under the tax cap. At the date of the publication of this pamphlet, either by the act of the Legislature or by referendum approval, the taxing bodies in 39 Illinois counties are subject to the tax cap.

The imposition of the tax cap resulted in a substantial decline in the growth rate of tax revenues. The tax cap operated by denying governmental bodies, except for home rule municipalities, the ability to access in substantial ways either previously approved but not fully utilized tax rates or increases in assessed valuation resulting from appreciation of existing property. The way that the tax cap works is to place a limit, based on the annual percentage change in the Consumer Price Index (or 5%, whichever is less), on the additional incremental revenue that a governmental body can collect from year to year, notwithstanding the fund-specific tax rates approved or allowed by voters and increases in assessed valuation due to appreciation. The tax cap legislation also had the effect of requiring newly formed governments to seek a referendum for not only creation but also specified starter tax rates.

Let us take an example of a governmental body that in the prior year had received $10,000,000 in real estate taxes. In addition, let us assume

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[11] Cook County was added by statute in 1994. Other counties have become subject to the tax cap by referendum. Nine counties have expressly rejected tax cap referenda.

that this extension could be produced by multiplying only 80% of its authorized tax rates by its then applicable assessed valuation. The government had not chosen to seek the remaining 20% of the tax dollars that in that tax year could have been sought in the levy. Let us assume that in the next tax year the equalized assessed valuation of property within the governmental body had appreciated by 10%. Before the tax cap, that governmental body could have levied $11,000,000 knowing that the sum would have been produced without even tapping into the unused 20% portion of the government's authorized tax rates. The tax rate would have remained the same, and a 10% increase in tax revenue would have been realized. If the government had wanted to produce in excess of $11,000,000, it would also have been able to do so up to a dollar amount that would have been produced by multiplying the new increased assessment by its total allowable tax rate, including the previously unused tax rate authority. The tax cap materially changed these assumptions.

With regards to existing development and property, a governmental body that became subject to the tax cap was now limited without further referendum approval to an extension increase from the amount extended in the prior tax year that was no greater than the cost-of-living, or 5%, whichever was less. In the example given above, the governmental body that would have received $11,000,000 instead could receive no more than $10,500,000 in a tax year when the CPI was 5%. One exception to that rule was that the governmental body was allowed to receive uncapped funds resulting from the application of the allowed tax rate to the full value of new construction, annexed property, and retired TIF increment.[12]

Strict reliance on the prior year's extension to determine the succeeding levy might have resulted in no incentive to reduce taxes in a year in which governmental expenses had, for one reason or another, dipped. Under such a rule, if governments reduced their taxes, then they would forever be "catching up" because levy increases would continue to be evaluated and quantified based upon the prudent and thrifty municipality's decision to lower taxes in a particular year. Not only would there be no incentive for lowering taxes, but there would have been an actual detriment in doing so. As a result, in enacting the tax cap the General Assembly allowed governments to levy and the County Clerk to extend taxes, utilizing as a base the highest level of tax dollars received

[12] Once new construction, annexed property, or retired TIF increment is absorbed into the existing EAV, the value associated therewith is thereafter subject to the limitations presented by the tax cap. Accordingly, capturing all of the revenue attributable to new construction the first year it is available is important.

over a previous three-year period. Governments could, thereby, grant their citizens a brief real estate tax decrease in a particular year, while retaining the right to increase taxes from the base established by the highest taxes levied in one of the previous three years.

After a number of years with the tax cap in place, many governments began to feel the need to seek referenda approval to deviate from the strict constraints. In addition, the tax cap began its life during a period of very small percentage increases in the cost of living index. The tax cap did allow a government to request from its citizens the right to levy and receive taxes above the tax cap based upon referendum approval, but that permission could only be given by the public for relief during a one-year period. In addition, questions arose as to whether referenda seeking either to modify the tax cap formula or to increase tax rates gave the public adequate information about the exact dollar amounts being sought in these public questions. Typically, referenda asked voters whether they would agree to increases in tax rates, but the information cited in the electoral proposition only referred to a fractional rate rather than the gross dollar amounts that would be received if the change were approved. In addition, no information was given about how these dollar amounts would affect the taxes applicable to a standard single-family home.

In an effort to solve many of these problems, the General Assembly made two significant changes to the Tax Cap Law.[13] First, for taxing bodies subject to the tax cap, it eliminated all referenda to increase fund-specific tax rates, providing instead for two types of referenda with rather unfamiliar names: limiting rate and extension limitation referenda. Second, as a consequence of the first change, the amended law automatically moved all fund-specific tax rate ceilings to their maximum statutory limit. Notwithstanding the liberalization of the fund rate ceilings, all taxing bodies subject to the Tax Cap Law must still contain their levies to no more than the Limiting Rate. Therefore, while the sum of the maximum allowable rates for those funds that comprise the aggregate extension may be greater than the Limiting Rate, the township is still constrained by the Limiting Rate for the final extension.

Next, we will explain how the increased fund rate ceilings might affect the way local governments may levy taxes. Many townships likely receive "tax objections" related to one or another of the special purpose levies, claiming an alleged "excess accumulation" of funds. An excess accumulation claim alleges the taxing body has sufficient reserves for that

[13] See Public Act 94-976, effective June 30, 2006.

purpose to pay for more than two times an average year's expenditures without collecting any additional tax receipts.[14]

Figure A

ABC Township

Fund Name	Tax Rate	Bank Balance	Average Annual Expenses
Audit	0.005%	$25,000	$10,000
Library	0.600%	$500,000	$400,000

For the Audit Fund described above, the Township has sufficient reserves to pay for more than two years' worth of audit-related expenses. Consequently, any new levy for the audit fund could result in a tax rate objection. In contrast, the Library Fund only has sufficient reserves to pay for one year's worth of obligations. The law would permit an additional levy to pay for the Township's library operations.

In the event the taxing body does have funds for which it receives tax rate objections or if it just has excess reserves, the 2006 amendments provide an opportunity to re-balance the levy to avoid such objections and build reserves in other funds. In the example described in Figure A, ABC Township could decide to levy only a small amount for its audit fund and instead allocate more of the taxes it would have levied for audit to the library tax.[15] Since the library tax rate is now at the statutory maximum, which is probably at a higher level than the taxing body was formerly authorized to request, ABC Township should have additional capacity to levy more money for those funds. Further, since the overall amount of

[14] This rule has been adopted in case law and has no origin in statute. Accordingly, while it is subject to change and interpretation, it has received common acceptance.

[15] It is recommended to not "zero out" levies subject to a back-door referendum more than three years in a row. Doing so will cause the fund to become a "new fund" under other provisions of the Tax Cap Law. New funds require a referendum to restart the ability to levy. 35 ILCS 200/18-190.

taxes is not being increased, the taxing body should not be any more likely to violate the tax cap.[16]

The new law has not been directly interpreted by the courts, and there is some risk in following the new path seemingly laid out by the statutory changes. Specific questions should be referred to local counsel or the county tax extension officer.

The above example illustrates that one of the policies implemented by the amendments is to grant taxing bodies in tax cap counties greater flexibility to determine how to spend their tax receipts so long as the aggregate extension does not exceed the tax cap. This flexibility will simplify the taxation process for residents since they will no longer be asked to approve increases in the tax rate for specific funds. Only when a taxing body needs to increase its aggregate amount of tax revenue will it be required to ask for voter consent.

Next we will describe the new rules and procedures for seeking voter approval to raise a taxing body's tax revenue. Until the 2006 changes in the Tax Cap Law, when a taxing district in a tax cap county wished to increase a fund-specific tax rate and that increase would cause the resulting extension to exceed the Limiting Rate, the taxing district had to get referendum approval of the fund rate increase. As described earlier, the amendments eliminate the need for all referenda to increase fund rates by automatically increasing all fund rates for all taxing districts to the maximum rate allowed by law which previously was allowed only by referendum. Nonetheless, a taxing body may not simply tax at the sum of all its fund rates if the resulting levy would exceed the Limiting Rate. In that case either the individual fund levies must be reduced or the Limiting Rate must be increased by referendum.

Following is an explanation of how the Limiting Rate is calculated in order to understand how each component of the formula impacts the final rate. For simplification, let us assume (1) that the subject taxing body had an aggregate extension[17] last year equal to $100,000, (2) there was a 3% change in CPI, and (3) property in the district, which last year had an

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[16] The re-balancing of corporate and special purpose taxes should also have no impact on compliance with the Truth in Taxation Act since that law addresses only the aggregate amount of taxes levied or extended.

[17] Public Act 097-0611 exempts from the calculation of aggregate extension the amount levied for road purposes in the first year after a township assumes the responsibility of a road district that has been abolished under the provisions of Section 6-133 of the Illinois Highway Code.

aggregate fair market value equal to $3,000,000, appreciated 5% from the previous year. We will also assume, for now, that no new construction and no annexations occurred.

(Prior Year's Aggregate Extension) * (1 + Extension Limitation) (Current Value of Prior Year's EAV)		= Limiting Rate
Last Year's Limiting Rate =	$100,000/$1,000,000	= 0.100
Current Year's Limiting Rate =	($100,000) * (1.03) ($1,050,000)	= 0. 98
Current Year's Aggregate Extension =	$1,050,000 * 0.098	= $103,000

From this example, one can see that if the rate of appreciation of the existing EAV is greater than the rate of inflation, the Limiting Rate will fall. Still, because the tax base against which the rate is applied is larger, the resulting Aggregate Extension is also larger. In this case the amount of the increase is exactly equivalent to the percentage increase in the CPI. However, when one adds new construction and annexations to the Current Year EAV, the relationship is not so proportionate.

The Limiting Rate resulting from the above calculation can be increased in one of two ways – by passing a referendum to increase either the Limiting Rate or the Extension Limitation. Under the 2006 amendments, the Limiting Rate established by referendum may now be applied for up to *four years*. In contrast, the Extension Limitation may be increased *any number of years* specified in the referendum question, whereas before it was only applicable for one year. If approved, the Limiting Rate is established directly by the result of the referendum rather than by applying the above calculation. Likewise, the Extension Limitation will be set at the percentage approved by the referendum rather than by reference to the CPI and without regard to the 5% cap. However, the absolute impact on tax revenues from an increase in the Extension Limitation is less predictable than an increase in the Limiting Rate since it is only one part of the calculation. The following example of two tax-capped districts, which implements the formula described above, will help to illustrate this point.[18]

Taxing Body 1

[18] Notes regarding the examples: 1) All estimates apply purposely low figures for illustrative purposes. In this manner most readers can extrapolate the impact demonstrated by these examples by comparing their respective EAV and rates to the examples we have provided. 2) All figures shown are rounded for simplicity. The actual results are based on true calculations.

Last Year EAV	$1,000,000
Last Year Aggregate Extension	$100,000
CPI/Extension Limitation	3%
Rate of Appreciation of EAV	1%
New Construction/Annexations	1%
Current Year EAV	1,020,000
Limiting Rate =	0.102
Current Year Aggregate Extension =	$104,020

Taxing Body 2

Last Year EAV	$1,000,000
Last Year Aggregate Extension	$100,000
CPI/Extension Limitation	3%
Rate of Appreciation of EAV	10%
New Construction/Annexations	10%
Current Year EAV	1,020,000
Limiting Rate =	0.094
Current Year Aggregate Extension =	$112,364

For Taxing Body 1 to be able to collect the same amount of taxes as Taxing Body 2, it would need to have an Extension Limitation equal to 11.3%. From this example one can infer that in areas where the rate of growth and appreciation is slow, the best means to increase the amount of taxes is to request approval to increase the Extension Limitation for multiple years. This will result in a higher Limiting Rate every year and, consequently, a greater Aggregate Extension.

For Taxing Body 2, where a community is experiencing rapid new construction and escalating property values, a direct increase to the Limiting Rate is preferable.[19] This form of referendum will deter the natural diminution of the Limiting Rate that normally occurs in such contexts and thus will capture more of the new growth as tax revenue. For comparison, the following table shows the Limiting Rate and Aggregate Extension for the next three years with and without a referendum to set the Limiting Rate equal to 0.094 during that time.[20]

Taxing Body 2A

[19] Annexed property is considered equivalent to new construction for the purposes of calculating the aggregate extension.

[20] For this table we have assumed consistent 10% rates of appreciation and growth in each year.

	Limiting Rate	*Aggregate Extension*
Year 1	0.088	$127,308
Year 2	0.082	$144,240
Year 3	0.077	$163,424

Taxing Body 2B

	Limiting Rate	*Aggregate Extension*
Year 1	0.094	$136,488
Year 2	0.094	$165,150
Year 3	0.094	$199,832

Based on the results described in the table, a referendum passed to freeze the limiting rate at 0.094 results in the taxing body receiving 22% more taxes in Year 3, and cumulatively 15% more over the course of the three years. If a district is experiencing rapid appreciation and new construction, one can extrapolate these figures to estimate the scope of the impact from a Limiting Rate referendum.

To recap, in those districts where property values are flat and new construction is slow, an Extension Limitation referendum is more likely to generate greater property tax revenues. In contrast, where appreciation and growth are high, a Limiting Rate referendum will help capture more of the increased value as tax revenue. Naturally, where the EAV is rising rapidly, either form of referendum will generate more taxes, but the Limiting Rate referendum is more direct and will create a more predictable result, although it may only be applied for four years. In all cases, when the voter authorized change expires, the Limiting Rate and Extension Limitation are determined according to the regular statutory method based on the Aggregate Extension collected during the last year for which the referendum applied.

For taxing bodies seeking to increase their Extension Limitation, the referendum ballot must describe the additional tax a property owner with a home valued at $100,000 would pay and the additional tax the same property owner would be expected to pay in each subsequent year for which the referendum is applicable, based on the average increase of the district's EAV (excluding new property) over a three-year period. For this proposition, the ballot would appear as follows:

Shall the extension limitation under the Property Tax Extension Limitation Law for Taxing Body 1, Any County, Illinois, be increased from the lesser of 5% or the percentage increase in the Consumer Price Index over the previous year to ___% [insert the desired extension limitation] per year for _____[insert each levy year for which the increased extension limitation will apply]?	_____ YES _____ NO

1. For the _____[insert the first levy year for which the increased extension limitation will be applicable] levy year the approximate amount of the additional tax extendable against the property containing a single family residence and having a fair market value at the time of the referendum of $100,000 is estimated to be $_________.

2. Based upon an average annual percentage increase (or decrease) in the market value of such property of _____% [insert percentage equal to the average annual percentage increase or decrease for the prior three levy years at the time the referendum is initiated in the amount of the district's EAV minus new growth], the approximate amount of the additional tax extendable against such property for the _____ levy year is estimated to be $_______ and for the ______ levy year is estimated to be $___________.

The second ballot disclosure is necessary only if the new Extension Limitation rate is to apply over multiple levy years.

For taxing bodies seeking to increase their Limiting Rate, the referendum ballot must state (1) the amount of taxes extended at the most recent Limiting Rate versus the amount of taxes to be extended under the new rate, (2) the additional tax a property owner with a home value of $100,000 would pay, and (3) the additional tax the same property owner would be expected to pay for each subsequent referendum levy year, based on a three year average percentage increase of the district's EAV (excluding new growth). For this proposition, the ballot would appear as follows:

Shall the limiting rate under the Property Tax Extension Limitation Law for __________ [insert the legal name, number, and county or counties of the taxing district], Illinois, be increased an additional amount equal to ___% above the limiting rate for levy year ____ [insert the most recent levy year for which the limiting rate of the taxing district is known at the time the submission of the proposition is initiated by the taxing district] and be equal to ____% of the equalized assessed value of the taxable property therein for levy year(s) [insert each levy year for which the increase will be applicable, which years must be consecutive and not exceed 4]?	_____ YES _____ NO

3. The approximate amount of taxes extendable at the most recently extended limiting rate is $____, and the approximate amount of taxes extendable if the proposition is approved is $___________.

4. For the ____ [insert the first levy year for which the increased limiting rate will be applicable] levy year the approximate amount of the additional tax extendable against property containing a single family residence and having a fair market value at the time of the referendum of $100,000 is estimated to be $_______.

5. Based upon an average annual percentage increase (or decrease) in the market value of such property of ____% [insert percentage equal to the average annual percentage increase or decrease for the prior three levy years, at the time the submission of the proposition is initiated by the taxing district, in the amount of EAV less new growth], the approximate amount of the additional tax extendable against such property for the ___ levy year is estimated to be $_____ and for the ____ levy year is estimated to be $________.

6. If the proposition is approved, the aggregate extension for _____[insert each levy year for which the increase will apply] will be determined by the limiting rate set forth in the proposition, rather than the applicable limiting rate calculated under the provisions of the Property Tax Extension Limitation Law (commonly known as the Property Tax Cap Law).

The impact of these revisions to the Tax Cap Law upon tax capped governments seeking to increase taxes is significant and requires careful review of the law. Since these referendum rules are fairly new, having only been applied in the last few election cycles, no interpretive case law guides local governments through the process. Many governments that sought referendum approval for the first time under the new scheme experienced difficulty with calculating the amounts that must be described in the new supplemental disclosures following the proposition. Fortunately, good faith errors in such calculations are not considered fatal.[21] Nevertheless, contacting the township attorney for assistance is wise.

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[21] (Any error, miscalculation, or inaccuracy in computing any amount set forth on the ballot and in the notice that is not deliberate shall not invalidate or affect the validity of any proposition approved.) 35 ILCS 200/18-190.

6. Road District Levies

Questions sometimes arise over whether the township board, which is required to adopt the road district's levy, has the ability to reduce the levy as presented by the highway commissioner. Section 6-202.1 of the Illinois Highway Code states that the highway commissioner must be present at the clerk's office annually on or before the last Tuesday in December of each year for the purpose of determining the tax levy to be certified by the township board to the county clerk, 605 ILCS 5/6-202.1. This language appears to suggest that (unless located in a county not under township organization) the highway commissioner determines the levy, which must be approved by the township board. The judges in two cases in the 22nd circuit (McHenry County) recently agreed that the township board cannot reduce the highway commissioner's levy. (Case 21 MR 1001 and Case 21 MR 1086). However, remember that a road district cannot expend more funds than have been appropriated in the budget, so township boards may be effectively able to limit the amount sought in the levy by implementing controls over the road district's budget, provided that they do so in accordance with the law. (See section on Road District budgets – Chapter XXIII(F)).

D. Accumulation of Township Funds

Township funds, excluding a township's capital fund, shall not exceed an amount equal to or greater than 2.5 times the annual average expenditure of the previous 3 fiscal years. 60 ILCS 1/85-65.

E. Expenditure of Township Funds

Subject to the requirement for a prior appropriation, the township board may either expend funds directly or may enter into any cooperative agreement or contract with any other governmental entity, not-for-profit corporation, community service organization in existence for at least one year, or business entity with respect to the expenditure of township funds or funds made available to the township under the federal State and Local Fiscal Assistance Act of 1972. Such expenditures may be used to provide township residents with services such as ordinary and necessary maintenance and operating expenditures for public safety, environmental protection, public transportation, health, recreation, libraries and social services; ordinary and necessary capital expenditures authorized by law; and the development and retention of business, industrial, manufacturing and tourist facilities within the township. 60 ILCS 1/85-13. The statute provides additional details regarding eligibility for receiving funds and

regarding specific expenditures such as day care, senior services, recycling, and the alleviation of economically depressed areas. 60 ILCS 1/85-13.

F. Township Bills

1. Auditing Bills

The Township Code generally provides that the township board must meet at the township clerk's office for the purpose of examining the township and road district accounts before any bills (other than general assistance, obligations for Social Security taxes as required by the Social Security Enabling Act, and wages that are subject to the Illinois Wage Payment and Collection Act) are paid. 60 ILCS 1/80-10. With respect to the location of the meeting, however, this provision has been held discretionary. People ex rel. Painter v. Chi., B. & Q. R. Co., 314 Ill. 544, 145 N.E. 729 (1924). The township board may consider and approve bills individually, or in a summary statement covering a number of bills. 60 ILCS 1/80-10. At the same time and place, the board shall also examine the accounts of the supervisor and the highway commissioner, for all money received and distributed by them. 60 ILCS 1/80-15. The examination of the accounts is sometimes also referred to as "auditing" of the accounts, but this action should not be confused with the annual audit described below.

2. Payment of Bills

After "audit," approved bills should be paid by the township supervisor within 20 days after the township clerk presents a certificate stating the amount, to whom it should be paid, the account to be charged, and the date of the audit. Before payment, the supervisor should countersign the certificate. Wages to township employees, however, must be paid at least once a month, in accordance with a payment schedule established by the township board, which shall provide for employee compensation for all wages earned during the pay period with payment to be made no later than 15 days after the end of the pay period. Failure on the part of the supervisor to pay audited accounts when funds are available and the expenditure was proper shall be grounds for forfeiture of the supervisor's bond. 60 ILCS 1/80-50.

For road districts, the road district clerk shall countersign and keep a complete record of all warrants issued by the highway commissioner. 605 ILCS 5/6-202.3. Typically, the process goes as follows: 1) the highway commissioner submits a warrant to the township clerk (warrants may be

submitted together; 2) the township clerk countersigns the warrant and presents it to the township board for review; 3) the township board reviews the warrant and verifies that an applicable line item(s) exists within the budget and appropriation ordinance; 4) the township board reviews the amount of funds budgeted and funds remaining within applicable line item(s); 5) the township board has the right to request an itemized bill (detailed receipt) for any submitted warrant, and if this documentation is not provided, the warrant may be denied for payment; 6) if the expenditure is budgeted and the funds are present, the board will approve the warrant for payment, but if no applicable line item covers the expenditure or if not enough funds remain within the line item, the warrant cannot be approved; 7) if approved, the supervisor pays the warrant.

3. Attestation of Payouts by Township Clerk

Effective January 1, 2019, a new law amended the Township Code, the Highway Code and the Public Graveyards Act by adding language requiring township clerks to "attest" to certain "payouts" of funds. This law adds a new section 7-27 to the Township Code specifying that, "If a township supervisor issues a payout of funds from the township treasury, the township clerk shall attest to such payment." The Highway Code is amended by adding a new section 6-114.5 which states, "If a road district treasurer issues a payout from the road district's treasury or the township treasury, the road district clerk shall attest to all moneys paid out." The Public Graveyards Act was amended to also include a similar provision.

The legislation does not define the manner in which the clerk is to "attest" to the payouts – does that mean that the clerk is attesting that the funds were expended? Or that they were expended for the purposes specified? Or that there are sufficient funds available to make the payout? Or is the clerk attesting that the township board or the Supervisor approved the expenditure of the funds? Nor does the legislation define what a "payout" is. Does "payout" cover credit card payments, auto payment of utility bills and electronic fund transfers? What about townships which have passed resolutions authorizing the payment of routine utility bills? There is no record of legislative history or substantive debate available to help determine the General Assembly's intent behind this new law.

In the absence of clarity, townships should seek direction from their township attorneys about how to best comply with the attestation requirement. In our opinion, townships can comply in several ways. First, one simple option for township clerks would be to maintain a copy

of all expenditures or "payouts," develop a separate sheet attesting that the payouts at issue were authorized by the township board, expended for the purposes specified, provided for in the budget and directed to be paid out by the township supervisor. This listing would also include all bills that are on auto-pay or that occur by electronic fund transfers. That action would seem broad enough to comply with the requirements of this legislation, and it would perhaps be easier for clerks to accomplish. Recently, P.A. 101-0519 amended the Township Code, to provide that "[a] township board may adopt rules regulating the township clerk's attestation when the township clerk is temporarily unavailable, for payroll processing, and for the payout of funds made by cash, credit and debit card, electronic check, and other means. Attestation under this Section is not required by the township clerk prior to the issuance of an emergency financial assistance payout authorized by Section 6-10 of the Illinois Public Aid Code."

4. Local Government Prompt Payment Act

When dealing with vendors, the township must approve or disapprove a bill within 30 days of receipt of the bill for goods/services. If the township board disapproves of the bill, the vendor must be notified immediately. Any bill approved for payment must be paid within 30 days after approval, with failure to comply resulting in a penalty of 1% of the bill for each month that it remains unpaid. The Local Government Prompt Payment Act allows for additional time to test or professionally evaluate the fitness of the material, labor, or services provided. *See* 50 ILCS 505/1 *et seq*.

G. Annual Audit

All accounts audited (including those rejected) shall be delivered with the certificate of the majority of the trustees to the township clerk, who shall keep them on file for inspection by inhabitants of the township. They shall also be produced and either distributed or read by the township clerk, in an unaudited form, at the next annual meeting. 60 ILCS 1/80-20; 60 ILCS 1/70-15.

If a township receives revenue equal to or in excess of $850,000 during the fiscal year (exclusive of road funds), the township board shall have the accounts and records thoroughly audited by a Certified Public Accountant within 6 months of the close of the fiscal year. A copy of the accountant's record and report must be filed with both the township and county clerk for inspection. In townships receiving revenue less than

$850,000 during the fiscal year (excluding road funds), the township board shall have the accounts and records audited and inspected by an independent auditing committee comprised of 3 township electors chosen by the township board. This audit shall be completed within 6 months of the close of the fiscal year, and a copy of the report and recommendations must be filed with both the township and county clerk for public inspection. This committee may not contain any member of the township board nor a relative of a township trustee. The committee members should be proficient in accounting and shall be compensated at a rate determined by the board but not to exceed $50 per day. In the event of the end of a term of office or vacancy in the office of the supervisor, townships with less than $850,000 in revenue must have its accounts and records audited by a CPA within six months of that event, as if it were a township with revenues over $850,000. A copy of the accountant's report and recommendations shall be filed with the township clerk and another copy shall be filed with the county clerk for public inspection. 60 ILCS 1/80-20.

H. Annual Treasurer's Report

The Public Funds Statement Publication Act (30 ILCS 15/1 to 15/6) requires the supervisor of every township that has received and dispersed public funds to prepare an Annual Statement of Receipts and Disbursements. This statement is commonly known as the "Annual Treasurer's Report."

The Annual Treasurer's Report must identify and contain the following information. While no required format exists, the Illinois Department of Commerce and Economic Opportunity recommends the following format:[22]

1. Identify all monies received by source and amount, and combine all funds together;

2. Identify all monies paid out to vendors where the total amount paid during the fiscal year exceeds $2,500 in the aggregate, naming such vendors and indicating the amount paid and the account charged (this does not include payroll), and combine all funds together;

[22] Ill. Dept. of Commerce and Economic Opportunity, *Annual Treasurer's Report*, *available at* http://www.commerce.state.il.us/NR/rdonlyres/33F0520B-F299-4ACB-91D5-ABA24A0E6254/0/AnnualTreasurersReport041609.pdf (last visited Apr. 29, 2011).

3. For all vendors receiving less than $2,500, report this amount as "All Other Disbursements Less than $2,500," and combine all funds together (no need to list vendors);

4. Identify all monies paid as compensation (gross, before deductions) for personal services, listing the name and compensation received by every elected/appointed official and employee. The treasurer may elect to report compensation by name, listing each person in one of the following categories:

   a. Under $25,000
   b. $25,000 to $49,999
   c. $50,000 to $74,999
   d. $75,000 to $99,999
   e. $100,000 to $124,999
   f. $125,000 and over

5. Draw up a summary statement of operations for all funds and account groups as excerpted from the "Annual Financial Report" filed with the Office of the State Comptroller. 30 ILCS 15/1.

The Annual Treasurer's Report shall be subscribed and sworn to by the supervisor and shall be filed in the office of the county clerk within 6 months of the close of the fiscal year.

Also within 6 months after the expiration of the fiscal year, the supervisor must publish the Annual Treasurer's Report once in an English language newspaper published in the township or, if no such newspaper is published in the township, in one published in the county. However, this publication requirement does not apply to a township that has its funds audited by a certified public accountant and the audit is filed with the County Clerk and published in the manner prescribed above for the Annual Treasurer's Report. Effective January 1, 2012, P.A. 97-0146 allows publication of only a "notice of availability" of the audit, rather than the entire audit or Annual Treasurer's Report. Please talk to the township attorney for additional details.

IMPORTANT NOTE: The Annual Treasurer's Report should not disclose the name or address of any person to whom child support or maintenance was paid in accordance with a court order requiring the withholding of child support or maintenance from an employee's wages. 30 ILCS 15/2.1.

It also should not contain general assistance client names. (Use a case number, but not client names).

If the publishing certificate and a copy of the published "Notice of Availability" or Treasurer's Report, as applicable, are not filed with the county clerk, the taxing district's property taxes must be withheld until the documents are filed. 30 ILCS 15/3a. Additionally, any supervisor failing to comply with the requirements may be guilty of a Class A misdemeanor and shall forfeit not less than $25 nor more than $500. 30 ILCS 15/5; 30 ILCS 15/6.

I. Investment of Public Funds

1. Public Funds Defined

"Public funds" shall mean current operating funds, special funds, interest and sinking funds, and funds of any kind or character belonging to or in the custody of a township or road district. 30 ILCS 235/1.

2. Authorized Investments

A township or road district may invest its public funds as follows:

1. in bonds, notes, certificates of indebtedness, treasury bills or other securities now or hereafter issued, which are guaranteed by the full faith and credit of the United States of America as to principal and interest;

2. in bonds, notes, or other similar obligations of the United States of America or its agencies;

3. in interest-bearing savings accounts, interest-bearing certificates of deposits or interest-bearing time deposits or any other investments constituting direct obligations of any bank as defined by the Illinois Banking Act, 205 ILCS 5/1, *et seq.*

4. in obligations of corporations organized in the United States with assets exceeding $500,000,000 if (i) such obligations are rated at the time of purchase at one of the 3 highest classifications established by at least 2 standard rating services and which mature not later than 3 years from the date of purchase, (ii) such purchases do not exceed 10% of the corporation's outstanding obligations, and (iii)

no more than one-third of the Township's funds may be invested in short term obligations of corporations; or

5. in money market mutual funds registered under the Investment Company Act of 1940, 15 U.S.C.A. § 80a-1, *et seq.*, provided that the portfolio of any such money market mutual fund is limited to obligations described in paragraph (1) or (2) above and to agreements to repurchase such obligations. 30 ILCS 235/2(a).

3. Authorized Financial Institutions

Investments may be made only in banks that are insured by the Federal Deposit Insurance Corporation. A township or road district may invest its public funds in short-term discount obligations of the Federal National Mortgage Association or in shares or other forms of securities legally issuable by savings banks or savings and loan associations incorporated under the laws of Illinois or any other state or under the laws of the United States. Investments may be made only in those savings banks or savings and loan associations, the shares or investment certificates of which are insured by the Federal Deposit Insurance Corporation. Any such securities may be purchased at the offering or market price thereof at the time of such purchase. All such securities so purchased shall mature or be redeemable on a date or dates prior to the time when, in the judgment of such governing authority, the public funds so invested will be required for expenditure by the township, road district, or their governing authorities. The expressed judgment of the township board as to when any public funds will be required for expenditure or be redeemable is final and conclusive. The township or road district may invest any public funds in dividend-bearing share accounts, share certificate accounts, or class of share accounts of a credit union chartered under the laws of Illinois or the laws of the United States, provided, however, that the principal office of any such credit union is located within the State of Illinois. Investments may be made only in those credit unions the accounts of which are insured by applicable law. 30 ILCS 235/2(b).

The township board, when requested by the supervisor, shall designate one or more banks or savings and loan associations in which funds of the township or road district shall be kept. 60 ILCS 1/70-10; 605 ILCS 5/6-206. In consolidated township road districts, the depository is designated by the highway board of trustees upon request of the treasurer of the consolidated township road district. 605 ILCS 5/6-206. The

township collector may also request the township board to designate a bank or savings and loan association in which the funds received by the collector may be deposited. 35 ILCS 200/20-30. For further details on requirements for designations and for changing banks or savings and loans, consult the statutory provisions cited in this paragraph or your township attorney.

4. Other Authorized Investments

A township or road district may also invest any public funds in a Public Treasurers' Investment Pool created under Section 17 of the State Treasurer Act, 15 ILCS 505/17. The township or road district may also invest any public funds in a fund managed, operated, and administered by a bank, subsidiary of a bank, or subsidiary of a bank holding company or use the services of such an entity to hold and invest or advise regarding the investment of any public funds.

5. Custody of Funds of Another Public Agency

To the extent a township or road district has custody of funds not owned by it or another public agency and does not otherwise have authority to invest such funds, it may invest such funds as if they were its own. Such funds must be released to the appropriate person at the earliest reasonable time but in no case exceeding 31 days after the private person becomes entitled to the receipt of them. All earnings accruing on any investments or deposits made pursuant to the provisions of this Article shall be credited to the public agency by or for which such investments or deposits were made, except as provided otherwise in Section 4.1 of the State Finance Act, 30 ILCS 105/4.1, or the Local Tax Collection Act, 35 ILCS 720/1, *et seq.*, and except where by specific statutory provisions such earnings are directed to be credited to and paid to a particular fund. 30 ILCS 235/2(f).

6. Repurchase Agreements

Except for repurchase agreements of government securities that are subject to the Government Securities Act of 1986, the township or road district shall not purchase or invest in instruments that constitute repurchase agreements, and no financial institution may enter into such an agreement with or on behalf of the township or road district unless the instrument and the transaction meet the following requirements:

1. The securities, unless registered or inscribed in the name of the township or road district, are purchased through banks or trust companies authorized to do business in the State of Illinois.

2. An authorized public officer, after ascertaining which firm will give the most favorable rate of interest, directs the custodial bank to “purchase” specified securities from a designated institution. The “custodial bank” is the bank or trust company, or agency of government, which acts for the township or road district in connection with repurchase agreements involving the investment of funds by the township or road district. The State Treasurer may act as custodial bank for the township or road district. To the extent the Treasurer acts in this capacity, the Treasurer is hereby authorized to pass through to the township or road district any charges assessed by the Federal Reserve Bank.

3. A custodial bank must be a member bank of the Federal Reserve System or maintain accounts with member banks. All transfers of book-entry securities must be accomplished on a Reserve Bank’s computer records through a member bank of the Federal Reserve System. These securities must be credited to the township or road district on the records of the custodial bank and the transaction must be confirmed in writing to the township or road district by the custodial bank.

4. Trading partners shall be limited to banks or trust companies authorized to do business in the State of Illinois or to registered primary reporting dealers.

5. The security interest must be perfected.

6. The township or road district enters into a written master repurchase agreement that outlines the basic responsibilities and liabilities of both buyer and seller.

7. Agreements shall be for periods of 330 days or less.

8. The township clerk or designee of the township board informs the custodial bank in writing of the maturity details of the repurchase agreement.

9. The custodial bank must take delivery of and maintain the securities in its custody for the account of the township or road district and confirm the transaction in writing to the township or road district. The Custodial Undertaking shall provide that the custodian takes possession of the securities exclusively for the township or road district; that the securities are free of any claims against the trading partner; and any claims by the custodian are subordinate to the township or road district's claim to rights to those securities.

10. The obligations purchased by the township or road district may only be sold or presented for redemption or payment by the fiscal agent bank or trust company holding the obligations upon the written instruction of the township clerk or officer authorized to make such investments.

11. The custodial bank shall be liable to the township or road district for any monetary loss suffered by the township or road district due to the failure of the custodial bank to take and maintain possession of such securities. 30 ILCS 235/2(h).

7. Investment Policy

Investment of public funds by the township or road district shall be governed by a written investment policy adopted by the township or road district. The level of detail and complexity of the investment policy shall be appropriate to the nature of the funds, the purpose for the funds, and the amount of the public funds within the investment portfolio. The policy shall address safety of principal, liquidity of funds, and return on investment and shall require that the investment portfolio be structured in such manner as to provide sufficient liquidity to pay obligations as they come due. In addition, the investment policy shall include or address the following:

1. a listing of authorized investments;

2. a rule, such as the "prudent person rule," establishing the standard of care that must be maintained by the persons investing the public funds;

3. investment guidelines that are appropriate to the nature of the funds, the purpose for the funds, and the amount of the public funds within the investment portfolio;

4. a policy regarding diversification of the investment portfolio that is appropriate to the nature of the funds, the purpose for the funds, and the amount of the public funds within the investment portfolio;

5. guidelines regarding collateral requirements for the deposit of public funds in a financial institution made pursuant to this Article, and guidelines for contractual arrangements for the custody and safekeeping of that collateral;

6. a policy regarding the establishment of a system of internal controls and written operational procedures designed to prevent losses of funds that might arise from fraud, employee error, misrepresentation by third parties, or imprudent actions by employees of the entity;

7. identify that the chief investment officer is responsible for establishing the internal controls and written procedures for the operation of the investment program;

8. performance measures that are appropriate to the nature of the funds, the purpose for the funds, and the amount of the public funds within the investment portfolio;

9. a policy regarding appropriate periodic review of the investment portfolio, its effectiveness in meeting the township's needs for safety, liquidity, rate of return, and diversification, and its general performance;

10. a policy establishing at least quarterly written reports of investment activities by the chief investment officer for submission to the township board. The reports shall include information regarding securities in the portfolio by class or type, book value, income earned, and market value as of the report date;

11. a policy regarding the selection of investment advisors, money managers, and financial institutions; and

12. a policy regarding ethics and conflicts of interest. 30 ILCS 235/2.5(a).

Additionally, the investment policy shall be adopted by the township board and shall be made available to the public at the main administrative office of the township or road district. 30 ILCS 235/2.5(b) and (c).

8. Designation of Payee

If any securities authorized under 30 ILCS 235/2 are issuable to a designated payee or to the order of a designated payee, then the township or road district shall be so designated. Further, if such securities are purchased with money taken from a particular fund of the township or road district, the name of such fund shall be added to that of the township or road district. If the securities can be registered, either as to principal or interest or both, they should be registered in the name of the township or road district and in the name of the fund to which they are to be credited. 30 ILCS 235/3.

9. Safekeeping and Depositing of Securities

All securities purchased under the authority of 30 ILCS 235/2 shall be held for the benefit of the township or road district that purchased them, and if purchased with money taken from a particular fund, such securities shall be credited to and deemed to be a part of such fund and shall be held for the benefit thereof. All securities so purchased shall be deposited and held in a safe place by the person or persons having custody of the fund to which they are credited, and such person or persons are responsible upon his or their official bond or bonds for the safekeeping of all such securities. Any securities purchased by the township or road district may be sold at any time by the township board at the then current market price thereof. Except as provided in Section 4.1 of "An Act in relation to State finance," 30 ILCS 105/4.1, all payments received as principal or interest, or otherwise, derived from any such securities shall be credited to the township or road district and to the fund by or for which such securities were purchased. 30 ILCS 235/4.

10. Investments or Deposits with or in Minority-Owned Financial Institutions

When investing or depositing public funds, each custodian shall, to the extent permitted by the Public Funds Investment Act, and by the lawful and reasonable performance of his custodial duties, invest or

deposit such funds with or in minority-owned financial institutions within this State. 30 ILCS 235/7.

XI. SERVICES OFFERED BY TOWNSHIP GOVERNMENT

A. Grants, Scholarships and Charitable Donations

As you will recall from Dillon's Rule, in order to exercise a power, a township must be able to point to a law that shows that it has the authority to exercise that power. There is no express authority in the Township Code for townships to use tax dollars to pay for charitable fundraisers, grants to people or organizations, charitable donations, or scholarships. In fact, the Illinois Constitution specifies that "Public funds, property or credit shall be used only for public purposes." Ill. Const. 1970, Art. VIII, Sec. 1. Townships often want to help local organizations who provide services to residents, but gifts or donations are not authorized by law. There could also raise discrimination claims -for example if the township gives funds to the girl scouts and not the boy scouts, or to the Heart Association and not the Juvenile Diabetes Foundation, or to one church and not another. There is also a potential problem of a donation serving as a public endorsement of the mission of a charitable organization - and township residents may not agree with an organization's mission. This could put the township in the position of evaluating a charity

While there is no express authority for townships to award scholarships and to provide customary gifts (retirement gift to a long-term employee, funeral flowers, etc.), we believe townships have the implied authority to expend nominal amounts for gifts to employees in normal gift-giving situations (wedding, retirement, awards, bereavement, etc.) However, we are aware that certain watchdog groups disagree with our opinion regarding this.

The best practice for scholarships is to solicit donations from individuals or organizations so that tax dollars are not used. Townships often receive requests for "grants" The best – and legal – way to partner with service organizations to provide valuable services to township residents would be to enter into a social service contract, discussed below.

B. Social Services

The way for townships to legally give not for profit corporations funding to provide social services to township residents would be for a township to contract with them. This practice is permitted by Section 85-13 of the Township Code. 60 ILCS 1/85-13. This section permits townships to contract with such organizations to provide:

1. Ordinary and necessary maintenance and operating expenses for the following:

2. Public safety (including law enforcement, fire protection, and building code enforcement)

3. Environmental protection (including sewage disposal, sanitation, pollution abatement)

4. Public transportation (including transit systems, paratransit systems, and streets and roads) The organization must have been in existence for at least one year.

5. Health

6. Recreation

7. Libraries

Such contracts can also cover ordinary and necessary capital expenditures authorized by law, and can address development and retention of business, industrial, manufacturing and tourist facilities within the township. In order to be eligible to contract with the township, the not for profit must have been in existence for at least one year.

C. Food Pantries

Many townships have historically worked with local not-for-profit corporations operating as food pantries to provide food for township residents who need food. Effective January 1, 2020, the Illinois Public Aid Code was amended to state that in a county under township organization, a township may provide, to eligible persons funds and administer programs for providing in-kind aid in meeting basic maintenance requirements, including, but not limited to, food, paper goods, toiletries, and clothing, to persons who are poor, indigent, homeless, or in need of immediate assistance, in addition to financial aid provided under this code." 305 ILCS 5/9-15 This would permit townships to expend general assistance funds for such purposes. In addition, section 6-9(b) of the Public Aid Code authorizes Townships to provide assistance to households for food and temporary shelter under Section 6-9(b) of the Public Aid Code."

XII. LEGAL PROCEEDINGS IN FAVOR OF AND AGAINST TOWNSHIPS

A. Conduct of Proceedings – Service of Process

Whenever a controversy or cause of action exists between any township of this state or between any township and an individual or corporation, proceedings may be held in civil actions for the purpose of trying or settling the controversy. The proceedings may be conducted in the same manner, and the judgment or order in the proceedings shall have the same effect as in other civil actions or proceedings of a similar kind between individuals and corporations. All processes shall be served by leaving a copy of the process with the township supervisor. 60 ILCS 1/95-5. A claim need not be presented to the township trustees before a suit can be maintained, as no condition is proscribed in a township's right to sue. Town of Ross v. Collins, 106 Ill. App. 396 (1902).

A township is entitled to bring legal actions in its name, Blanchard v. Town of LaSalle, 99 Ill. 278 (1881), and can be held equally liable with a natural person as in the case of trespass, Wolf v. Boettcher, 64 Ill. 316 (1872), or suits in contract, Elrod v. Town of Bernadotte, 53 Ill. 368 (1870).

B. Parties

In all suits or proceedings, the township shall sue and be sued in its own name except where township officers are authorized by law to sue in their name of office for the benefit of the township. 60 ILCS 1/95-10. A township can only bring suit in its name when authorized by township electors, except as otherwise provided. Town of O'Fallon v. Ohio & M. Ry. Co., 45 Ill. App. 572 (1892). Except where the township officials are authorized by law to sue for the township's benefit, its supervisor, without such authority, cannot maintain a suit on behalf of the township. Winne v. People ex rel. Hess, 177 Ill. 268, 52 N.E. 377 (1898).

C. Witnesses and Jurors – Competency

On the trial of every action in which the township is a party or is otherwise interested, the electors and inhabitants of the township shall be competent witnesses and jurors, except that in suits and proceedings by one township against another, no inhabitant of either township shall be a juror. 60 ILCS 1/95-15.

D. Partition of Township Lands

Whenever, by an order or decision in a civil action or proceeding brought to settle any controversy concerning township commons or other lands or the common property of a township or for the partition of township lands, the right of a township is settled and confirmed, the court in which the proceedings are held may partition the lands according to the rights of the parties. 60 ILCS 1/95-20.

E. Costs – Judgment For & Against Township

In all suits or proceedings prosecuted by or against township officers in their name of office, costs shall be recovered as in similar cases between individuals. Judgments recovered against a township or against township officers in actions prosecuted by or against them in their name of office shall be a township charge and when collected shall be paid to the person or persons to whom the judgment was awarded. 60 ILCS 1/85-25. Where a township becomes a party to a suit, it becomes liable for all legitimate expenses connected with such proceeding. Wells v. Whittaker, 4 Ill. App. 381 (1879). When a judgment is rendered against a township, the township board is bound to audit the judgment, allow it as a claim against the township, and levy a tax to pay the amount due. Moore v. Town of Browning, 373 Ill. 583, 27 N.E.2d 533 (1940). Additionally, under the Parental Responsibility Law, a plaintiff who is not a government was allowed to recover reasonable attorney's fees in an action against a parent or guardian for the willful or malicious conduct of their unemancipated minor causing injury to a person or property. 740 ILCS 115/3. Amendments to this law further provide that a local government plaintiff can now recover up to $15,000 in attorneys' fees.

F. Immunity

State statutes provide substantial protection to elected and appointed officers and employees of townships from personal liability arising from their actions. Unfortunately, the protections afforded by Illinois law cannot provide immunity against claims filed under federal law, as discussed below.

1. Illinois Tort Immunity Act - Generally

Most statutory protections against causes of action arising under state law are contained in the Local Governmental and Governmental Employees Tort Immunity Act. 745 ILCS 10/1-101, *et seq*. The concept of governmental immunity has long been recognized in Illinois. Prior to

1959, governmental bodies and their employees and officers enjoyed broad common law immunity under the doctrine of sovereign immunity– the principle that "the King can do no wrong." In 1959, in the case of Molitor v. Kaneland Cmty.. Unit Dist., 18 Ill.2d 11, 163 N.E.2d 89 (1959), *cert. denied,* 362 U.S. 968 (1960), the Illinois Supreme Court effectively abolished sovereign immunity from tort liability. In response to the Molitor decision and other cases that followed in the same vein, the state legislature enacted the Illinois Tort Immunity Act in 1965. Pursuant to the Act, the liability of local governmental units in tort is limited by an extensive list of immunities targeted to various specific governmental functions. See Hannon v. Counihan, 369 N.E.2d 917 (2d Dist. 1977). The purpose of the Act is to protect local government entities and employees from liability arising out of the operation of government. Additionally, the 1970 Illinois Constitution states: "Except as the General Assembly may provide by law, sovereign immunity in this State is abolished." Ill. Const. 1970, Art. XIII, § 4. Therefore, the tort immunity of local public entities and employees is created only by statute, most notably by the Tort Immunity Act.

2. Local Public Entities

The Illinois Tort Immunity Act applies to "local public entities," a term that encompasses townships, all other local governmental bodies, any intergovernmental agency or similar agency formed pursuant to the Constitution of the State of Illinois or the Intergovernmental Cooperation Act, and any not-for-profit corporation organized for the purpose of conducting public business. 745 ILCS 10/1-206.

3. Public Employees

The immunities found in the Tort Immunity Act also protect "public employees" from some, but not all, liability arising from the operation of government. Section 1-207 of the Act defines "public employee" as an employee of a local public entity. 745 ILCS 10/1-207. The term "employee" is also broadly defined to include any present or former:

1. Officer;
2. Member of a board, commission or committee; and
3. Agent, volunteer, servant or employee, whether or not compensated.

Independent contractors, by contrast, are not shielded from liability by the Tort Immunity Act. 745 ILCS 10/1-202. Therefore, in Warren v. Williams, 313 Ill.App.3d 450, 457 (1st Dist. 2000), the court ruled that a village attorney was not covered by the Act's protections, where the attorney worked quite independently from the village, using his own office and equipment, representing other clients, and determining for himself how to conduct his job. In a more general sense, independent contractors are usually hired by public entities to do a particular job or task, are paid a given amount for completing such task and, further, have discretion to carry out the job in the manner they deem appropriate. An employee, by contrast, generally works exclusively for the public entity, is compensated not on a task-by-task basis, but rather by time or salary and, most importantly, is subject to the supervision of the governmental body in terms of the details of his or her work. Other factors to consider include how the parties themselves characterize their relationship, whether the hired party is engaged in a distinct business of his or her own with clients beyond the particular governmental unit in question, the level of supervision, the provision of equipment and facilities, and the definiteness of the duration of the term of employment.

4. Scope of Protection

Although the Tort Immunity Act provides a broad grant of immunities to elected or appointed public officials and employees of townships, it does not provide absolute protection against all claims. In the first instance, the Act applies only to tort claims and claims that seek monetary damages. 745 ILCS 10/2-101; *see also* Raintree Homes, Inc. v. Vill. of Long Grove, 209 Ill.2d 248 (2004) (deeming Tort Immunity Act inapplicable in context of complaint seeking equitable relief). The Act expressly provides that it does not apply to, among other things, claims brought under the Workers' Compensation Act. 745 ILCS 10/2-101. Nor does it protect against the issuance of an injunction, mandamus, or any other equitable remedies. In addition, as stated earlier, the Act does not provide immunities against any claims brought under rights granted by federal law, and its protections occasionally lapse in the context of willful or wanton conduct. Certain sections of the Act explicitly state that willful and wanton conduct is not protected, such as section 2-202, in which public employees are subject to liability if their act or failure to act in the execution or enforcement of a law is the product of willful and wanton conduct. *See* In re Flood Litig., 176 Ill.2d 179, 196 (1997) (holding that the scope of immunity afforded by the Tort Immunity Act can only be limited by explicit statutory language that excludes willful and wanton conduct from its coverage). Therefore, if a given section of the Tort

Immunity Act is silent as to willful and wanton conduct, the silence indicates that the immunity provided therein also extends to shield willful and wanton conduct from liability.

5. Indemnification

If a lawsuit is instituted against a township officer or employee, the township may appear and defend against the claim or action, even if only to argue that the Tort Immunity Act bars the claim. 745 ILCS 10/2-302. If proper insurance protection is obtained or where the bond of the officer covers the matter, the insurance company or bonding company will appear on behalf of the individual officer and the township.

Proper insurance coverage is important in this area because legal expenses for defending a suit may be substantial and in some instances exceed the award of damages. Most self-insured governments, pools, and insurance companies will involve themselves in the case from the beginning, provide a defense, and pay a judgment or settlement on behalf of the official or employee. Sometimes when a question about the scope of coverage to be furnished arises, the official or the township itself will be defended under a reservation of rights. In that case, a written notice should be provided to the covered party explaining the limitations or questions about the coverage. Usually, a full defense will be provided, but the covered party will be invited to add an attorney at his or her expense if the party desires to supplement the defense being provided.

Under a rule established in Wright v. City of Danville, 174 Ill.2d 391 (1996), public entities may not provide for the payment of legal expenses of elected officials who are convicted of criminal misconduct and corruption. The Wright court ruled that because public funds must be used exclusively for public purposes, public entities are not authorized to compensate elected officials for any of their legal expenses when they are found guilty of a criminal offense. The court, however, left open the question whether public entities may indemnify public officials for their legal expenses when they are acquitted of all criminal charges relating to the performance of official duties.

6. Punitive Damages

Under Illinois common law, governmental bodies are not liable for punitive damages. The purpose of punitive damages is to punish a public officer or employee, to teach the officer or employee not to repeat any intentional, deliberate, and outrageous conduct, and to deter others from

similar conduct. Because the burden of punitive damages assessed against a governmental entity would be borne by the taxpayers, there is no justification for punishing taxpayers or attempting to deter them from future misconduct committed by public officers or employees over whom the taxpayers have no control. George v. Chi. Transit Auth., 58 Ill. App. 3d 692, 374 N.E.2d 679 (1st Dist. 1978).

The Tort Immunity Act expressly provides that a local public entity is not liable to pay punitive or exemplary damages in any state action brought directly or indirectly against it by the injured party or a third party. 745 ILCS 10/2-302. As a result, a local public entity may not be held liable for punitive damages in a personal injury action. Its officers and employees can, however, in an appropriate case be made to personally pay punitive damages. Under the federal Civil Rights Act, governmental bodies, but not their officers or employees, are exempt from punitive damages. However, in a 1996 opinion, the Illinois Attorney General indicated that governmental bodies can buy conventional insurance for its officers and employees specifically covering punitive damage awards in civil rights cases. 1996 Ill. Atty. Gen. Op. 034.

7. Statute of Limitations

Since 1986, the statute of limitations (i.e., the time period within which a claim must be filed against an Illinois public entity, officer, or employee) has been set forth in Section 8-101 of the Tort Immunity Act. That statute provides that "no civil action may be commenced in any court against a local entity or any of its employees for any injury unless it has commenced within one year from the date that injury was received or the cause of action accrued." 745 ILCS 10/8-101(a). However, the Tort Immunity Act's one-year limitations period does not apply to minors or persons suffering from certain other legal disabilities while they are still of minority age or laboring under an incapacitating disability. See McDonald v. City of Spring Valley, 285 Ill. 52, 54 (1918); see also Basham v. Hunt, 332 Ill.App.3d 980 (1st Dist. 2002) (holding that disabled plaintiff who sued a governmental body more than one year after her injury timely filed suit despite Tort Immunity Act's one year limitations period because the plaintiff filed her complaint within one year after she recovered from her disability). A person suffers from a "legal disability" when he or she is "entirely without understanding or capacity to make or communicate decisions regarding his person and totally unable to manage his estate or financial affairs." Est. of Riha v. Christ Hosp., 187 Ill.App.3d 752, 756 (1st Dist. 1989). Instead, the one-year limitations period begins running

once injured minors turn eighteen or recover from their injuries sufficiently to understand their situations and respond appropriately.

In addition, the statute of limitations cannot be tolled until a party knows or reasonably should have known about the injury giving rise to the cause of action. This is known as the "discovery rule," which applies when an injury is of the type that a party would not become immediately aware of it, such as where latent injuries stemming from unwitting exposure to toxic substances only manifest themselves many years later following the tortious act or event.

Courts have frequently wrestled with which limitations period to apply where the Tort Immunity Act's one-year statute of limitations directly conflicts with a countervailing, longer statute of limitations contained in the Code of Civil Procedure for specific causes of action. Typically, when a court is weighing which of two squarely conflicting statutes controls in a particular instance, the court opts to employ the more specifically applicable statute. Bowes v. City of Chi., 3 Ill.2d 175, 205 (1954). This approach, of course, is far more difficult in practice than it is in theory, as borne out by the decision in Tosado v. Miller, 188 Ill.2d 186 (1999), in which a deeply divided Illinois Supreme Court opted to utilize the Tort Immunity Act's one-year statute of limitations rather than the two years ordinarily allowed for bringing medical malpractice claims. While the court struggled to reach anything approaching a consensus, its approach was instructive. Namely, the court endeavored to determine which was the "more specifically applicable" limitations period in the context of the case, with the more closely relevant statute of limitations period controlling. *Id.*

Partially in response to the confusion created by competing limitations statutes when complaints are brought against county hospitals and their physician employees, Section 8-101 of the Act was amended in 2003 by P.A. 93-11 to provide for a two-year period in which to file suit for damages for injury or death against any local public entity or public employee arising out of patient care after the date on which the claimant knew, or through the use of reasonable diligence should have known, or received notice in writing of the existence of the injury or death for which damages are sought. 745 ILCS 10/8-101(b).

In some cases, the Tort Immunity Act's one-year limitations period is supplanted by a longer limitations period, such as the two-year timeframe for bringing suit that is granted to minors and individuals with disabilities for certain causes of action in Section 13-211 of the Code of Civil

Procedure. 735 ILCS 5/13-211. Under this rubric, individuals may bring suit for injuries up to two years (instead of just one, as under the Tort Immunity Act) after reaching the age of 18 or within two years of the removal of their incapacitating disability in cases where the underlying injury occurred when the individual was still a minor or was legally disabled within the meaning of the Code of Civil Procedure. Bertolis v. Community Unit School Dist., 283 Ill.App.3d 874 (4th Dist. 1996). However, where the individual is not under a legal disability at the time the cause of action accrues but comes under a legal disability before the period of limitations otherwise runs, the period of limitations is stayed until the disability is removed. 735 ILCS 5/13-211.

More recently, the Illinois Supreme Court held that the one-year limitations period controls over the four-year construction statute of limitations found in Section 13-214 of the Code of Civil Procedure. Paszkowski v. Metro. Water Reclamation Dist. of Chi., 213 Ill.2d 1, 13 (2004). However, in Doe v. Hinsdale Twp. High Sch., 388 Ill.App.3d 995, 1002 (2nd Dist. 2009), the court held that the childhood sexual abuse limitations period in Section 13-202.2 of the Illinois Code of Civil Procedure applied over the Tort Immunity Act reasoning that because Section 13-202.2 began with language stating that “notwithstanding any other provision of law” the legislature intended Section 13-202.2 to control over any other limitations period.

In any event, suits may not be brought more than four years following the negligent act or omission that caused the injury, even where injuries do not become apparent until after the limitations period expires and recovery is thereby foreclosed. 745 ILCS 10/8-101(b). In addition, the statute of limitations for filing a federal civil rights claim is not governed by the state-based Tort Immunity Act and extends for two years rather than just one year. Because of the considerable complexity and uncertainty inherent to this area of law, however, township officials should consult with counsel in determining how best to defend against a lawsuit on timeliness grounds.

8. Defamation Immunity

All high-ranking executive governmental officials are absolutely immune from civil suits instituted against them for defamation when such actions result from statements made while acting within the scope of official duties. 745 ILCS 10/2-107; Springer v. Harwig, 94 Ill.App.3d 281 (1st Dist. 1981). Where, however, an official steps beyond his or her official duties, the official is nonetheless exposed to personal liability in a

libel (written defamation) or slander (oral defamation) suit. In Catalano v. Pechous, 69 Ill.App.3d 797 (1st Dist. 1978); *aff'd*, 83 Ill.2d 146 (1980), an elected municipal clerk made a statement implying that another official had taken a bribe. The court found that this statement was not related to matters within the scope of the clerk's official duties and refused to grant immunity to the clerk. Similarly, a police chief was held not to be entitled to immunity when he allegedly made false statements to a federal agency to which a former police officer had applied. A waiver form the employee had signed was found not to cover the police chief's gratuitous statements. Stratman v. Brent, 291 Ill.App.3d 123 (2d Dist. 1997). Where immunity exists, however, it has been held to apply to press releases or statements made by executive governmental officers. Blair v. Walker, 64 Ill.2d 1 (1976); Springer v. Harwig, 94 Ill.App.3d 281 (1st Dist. 1981).

The purpose of insulating executive governmental officers from liability for defamation in the course of their official duties is to allow them to carry out their daily responsibilities free from concern that their actions will result in civil damage suits. This immunity extends to all elected executive officers and probably extends to department heads as well. In another case, a mayor was held to possess absolute privilege against a slander suit when he said at a council meeting that an applicant for a zoning variation had lied and cheated the city. Loniello v. Fitzgerald, 42 Ill.App.3d 900 (1st Dist. 1976). Similarly, in Dolatowski v. Life Printing and Publ'g. Co., 197 Ill.App.3d 23, 28 (1st Dist. 1990), the court held that statements made to the press by a deputy superintendent of police regarding the plaintiff's arrest and a crackdown on prostitution were absolutely privileged because statements were made in the performance of the public official's duties. While courts are apparently willing to apply a broad grant of immunity to the remarks of public officials, temperance of speech should not become a forgotten virtue. A court has found that elected members of a city council were not absolutely immune for removing public citizens from a meeting because they were expressing controversial views. The city officials argued that they had an absolute right to remove these individuals, but the court held that the immunity was not present during a public forum session of the meeting where citizens had always been allowed to freely speak. Hansen v. Bennett, 948 F.2d 397 (7th Cir. 1991).

9. Discretionary Immunity

Under Section 2-201 of the Tort Immunity Act, 745 ILCS 10/2-201, townships and their officers and employees are afforded absolute immunity for discretionary decisions. Johnson v. Mers, 279 Ill.App.3d

372 (2d Dist. 1996). This statutory grant of immunity to public officials for acts that fall within their official discretion is based upon the concept that public officials should be allowed to exercise their judgment without fear that a good faith mistake might subject them to a lawsuit. White v. Vill. of Homewood, 285 Ill.App.3d 496 (1st Dist. 1996).

The immunity found in Section 2-201 of the Act provides significant protection for public officials. *See* Melbourne Corp. v. City of Chi., 76 Ill.App.3d 595 (1st Dist. 1979) (holding that public employees involved in the "decision making and planning level" of a local public entity were immune from liability under Section 2-201). Discretionary immunity has been held to protect a variety of governmental functions. For example, in In re Chi. Flood Litig., 176 Ill.2d 179 (1997), this immunity applied to the city's approval of a pile-driving plan and to decisions made by the city after learning of flooding problems, such as who would repair the tunnel, how the contractor would be hired, and whether warning the public would cause panic. In Harinek v. 161 North Clark St., Ltd., 181 Ill.2d 335, 341 (1998), the court applied discretionary immunity to shield a municipality from liability stemming from a fire marshal's deficient instructions during a fire drill. In Pleasant Hill Cemetery Ass'n. v. Morefield, 2013 IL App (4th) 120645, the court determined that a township highway commissioner was immune because the commissioner exercised discretion when he altered the flow of surface water for road safety improvements. Because the work of most governmental officers involves the exercise of some discretion, the scope of this immunity can be quite broad. Where a public officer's conduct requires deliberation, decision or judgment, the immunity should apply. White v. Vill. of Homewood, *supra*.

However, when the officer's actions simply involve the obedience of orders, the performance of a set task that is prescribed by a law that defines the time, method, and occasion for execution, such that the officer has no choice in the matter and nothing is left to the officer's judgment or discretion, the courts classify the action as "ministerial" and the immunity provided under Section 2-201 does not apply. Bonnell v. Reg'l Bd. of Sch. Trs., 258 Ill.App.3d 485, 489 (5th Dist. 1994). For instance, townships exercise discretion when they select and adopt a plan for making public improvements, but as soon as they endeavor to carry out the formulated plan, they act in a ministerial fashion and are bound to see that the work is performed in a reasonably safe and skillful manner without any discretionary immunity protections. Eck v. McHenry Cnty. Pub. Bldg. Comm'n., 237 Ill.App.3d 755, 762 (2d Dist. 1992) (overruled on other grounds). More generally, policy-type decisions regarding whether and how to perform a given act or function are discretionary, while the actual,

rote implementation or performance of the task itself is simply ministerial and consequently unprotected by this section of the Tort Immunity Act. For example, in Trtanj v. City of Granite City, 379 Ill.App.3d 795, 806 (5th Dist. 2008), an insurance company brought a lawsuit against a city to recover for damages when a sewer backed up into a homeowner's basement. The court held that the city was not immune under Section 2-201 because its acts and omissions in ensuring that the work on the sewer system was done in a safe and skillful manner were ministerial, not discretionary, particularly in light of state standards governing the operation of sewer systems.

10. Supervision Immunity

Section 3-108 (a) of the Tort Immunity Act provides that neither a local public entity nor a public employee is liable for an injury caused by a failure to supervise an activity on or the use of any public property unless the conduct is willful and wanton. 745 ILCS 10/3-108(a). In granting this immunity, the legislature has acknowledged the fact that governments simply cannot employ enough workers to prevent fully all injuries by providing an error-proof level of supervision. Supervision immunity can apply to many activities that occur on public property. For example, activities protected under this immunity include a township that fails to post personnel in order to monitor construction activities that abut public sidewalks or a township that fails to post personnel at railroad grade crossing to prohibit pedestrians from proceeding around warning gates. In 1998, this provision was amended to allow for liability against a township for willful and wanton conduct in failing to provide supervision if the township had a statutory or common law duty to so provide supervision.

In Floyd *ex rel.* Floyd v. Rockford Park Dist., 355 Ill. App. 3d 695 (2d Dist. 2005), the Illinois Appellate Court held that a child's striking of another child with a metal golf club in a summer program did not expose the local government to liability for intentional harm, utter indifference, or conscious disregard as required to support a willful and wanton claim under the Tort Immunity Act. However, the Illinois Supreme Court recently held that Section 3-108(a) of the Tort Immunity Act was subject to exceptions for hazardous recreational activities as enumerated in 3-109(c)(2); the court found that the defendants willfully and wantonly failed to supervise a student rendered a quadriplegic after falling off of a trampoline. Murray v. Chicago Youth Center, 224 Ill. 2d. 213 (2007); *but see* Barr v. Cunningham, 2017 IL 120751 (2021) (holding that students playing floor hockey with relatively safe equipment was not a "dangerous

activity" that would make the failure to provide protective eyewear willful and wanton under the Tort Immunity Act).

Additionally, the non-reporting of sexual abuse is not a discretionary policy under Illinois law. Doe v. Dimovski, 336 Ill.App.3d 292 (2d Dist. 2003). The Illinois Supreme Court held in Doe *ex rel.* Ortega-Piron v. Chi. Bd. of Educ., 213 Il.2d. 19 (2004), that failure to supervise a known sex-offending student on a school bus constituted willful and wanton conduct. By not replacing a worker specifically designated to supervise the student on bus routes, the school board was exempted from the protection of Section 3-108 of the Tort Immunity Act.

11. Immunity for the Adoption of, or the Failure to Adopt Or Enforce, Any Law

Sections 2-103 and 2-205 of the Tort Immunity Act provide immunity to local public entities and their officials and employees for injuries caused by the adoption or the failure to adopt an enactment or failure to enforce any law. 745 ILCS 10/2-103 and 10/2-205. For example, in Ferentchak v. Vill. of Frankfort, 105 Ill.2d 474, (1985), the Illinois Supreme Court held a local public entity was not liable for negligent enforcement of its building code that resulted in damage to the plaintiff's property due to an alleged failure by the village's building inspector to adequately inspect the plaintiff's residence. In Stigler v. City of Chi., 48 Ill.2d 20, 268 N.E.2d 26 (1971), the Illinois Supreme Court refused to find the public entity liable for an alleged failure to enforce its housing code where a child became ill after eating lead paint chips. As with many of the other immunities under the Act, the language of Section 2-103 and 2-205 does not refer to willful and wanton conduct, and Illinois courts have concluded this immunity applies even to claims of willful and wanton conduct. Carter v. City of Elmwood, 162 Ill. App. 3d 235, 515 N.E.2d 415 (3d Dist.1987).

In a public case involving the deaths of thirteen persons and injury to multiple victims in a Chicago porch collapse, the Illinois Appellate Court, following a supervisory order of the Illinois Supreme Court to consider various questions, held that 1) the City of Chicago owed no common law duty to individual victims to enforce its building code; 2) the Tort Immunity Act provided unqualified immunity regardless of willful and wanton conduct; 3) the exception from immunity for willful and wanton conduct did not apply to building inspections; and 4) the victims were not under the direct and immediate control of the city and its inspectors when the porch collapsed to apply the willful and wanton conduct exception to

immunity. Ware v. City of Chi., 375 Ill.App.3d 574, 873 N.E.2d 944 (1st Dist. 2007). In this case, during a party held on a third floor apartment and while guests were out on the back porch, the third floor porch collapsed onto the second floor porch and then onto the first floor porch. Victims alleged the city's acts or omissions regarding inspection of the porch constituted willful and wanton misconduct, thereby violating the City's duty to them. The court disagreed.

In a second highly publicized Chicago case concerning tort immunity, a disturbance on the second floor of a nightclub that had been ordered closed by a court resulted in the deaths of over twenty and serious injuries to over thirty persons when they were caught in a pileup in the stairway as patrons attempted to flee the building after security guards at the club began using mace or pepper spray on the patrons. The building's owners had been previously cited by city building inspectors for failure to provide adequate exits for patrons on the ground level and failure to provide sufficient exits for patrons on the second floor, with the building ultimately being determined to be unsafe. In that matter, Anthony v. City of Chi., 382 Ill.App.3d 983, 888 N.E.2d 721, (1st Dist. 2008), the appellate court held that 1) the city was immune under the Local Governmental and Governmental Employees Tort Immunity Act from any liability stemming from its failure to shut down the nightclub after it opened in violation of court orders; 2) the city was immune from any liability for the officers' conduct at the scene of nightclub; and 3) the exception to immunity provided under Tort Immunity Act for willful and wanton conduct of public employees did not apply to the city.

However, in several sections of the Act liability will accrue if the actions are found to be "willful and wanton." Section 1-210 of the Act defines willful and wanton conduct as "a course of action which shows an actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others or their property." 745 ILCS 10/1-210. Willful and wanton conduct goes beyond mere inadvertence and requires a conscious choice of a course of action, either with knowledge of a serious danger to others or with knowledge of facts that would disclose a danger to a reasonable person. Pomaro v. Cmty. Consol. Sch. Dist. No. 21, 278 Ill. App. 3d 266, 662 N.E.2d 438 (1st Dist.1995). For example, willful and wanton conduct may be found where a public entity takes no action to correct a dangerous condition, even though it was informed about the condition and it knew that other persons had previously been injured because of the condition. Dunbar v. Latting, 250 Ill. App. 3d 786, 621 N.E.2d 232 (3d Dist.1993). However, inadvertence, incompetence, or unskillfulness does not

constitute willful and wanton conduct. Callaghan v. Vill. of Clarendon Hills, 929 N.E.2d 61 (2d Dist. 2010).

12. Immunity for the Issuance, Denial, Suspension or Revocation of Any Permit, License, or Certificate

Sections 2-104 and 2-206 of the Tort Immunity Act provide immunity to governmental entities and their officials and employees from claims that result from the "issuance, denial, suspension or revocation" or the "failure to issue, deny, suspend or revoke," any permit, license, certificate, approval, order of similar authorization, regardless of whether that authorization or permit should have been issued, denied, suspended, or revoked. 745 ILCS 10/2-104 and 10/2-206. In Foster and Kleiser v. City of Chi., 146 Ill. App. 3d 928, 497 N.E.2d 459 (1st Dist.1986), the court held this immunity is absolute.

State law immunities, however, do not apply to federal civil rights claims that may arise from the same conduct. For example, a state statutory-based immunity, such as the Illinois Tort Immunity Act, will not shield against a §1983 federal civil rights claim that argues the revocation of the property right in a license without a hearing violates federal law. Similarly, as its name suggests, the Tort Immunity Act generally affords no protection against contract claims. See Chi. Limousine Serv., Inc. v. City of Chi., 335 Ill.App.3d 489 (1st Dist. 2002).

13. Immunity for Failure to Make an Inspection or Negligent Inspection of Property

Sections 2-105 and 2-207 of the Tort Immunity Act provide immunity to public officials and their employees from claims arising out of an alleged failure to make an inspection or by reason of an inadequate or negligent inspection of any property, other than its own, for the purpose of determining whether the property complies with or violates any enactment or poses a hazard to health or safety. 745 ILCS 10/2-105 and 10/2-207; *see also,* Stigler v. City of Chi., 48 Ill.2d 20, 268 N.E.2d 26 (1971). This immunity codifies common law principles that a public entity generally owes no duty to a particular person to enforce governmental ordinances, permit requirements, or other regulations. However, these immunities do not apply to inspections of the public entity's own property. 745 ILCS 10/2-105 and 10/2-207.

14. Immunity for Institution or Prosecution of Judicial or Administrative Proceedings

Section 2-208 of the Act provides immunity to public officials and employees from claims that arise out of the institution or prosecution of any judicial or administrative proceeding within the scope of the public official's employment, unless the employee acts maliciously and without probable cause. 745 ILCS 10/2-208. In Knox Cnty. v. Midland Coal Co., 265 Ill. App. 3d 782, 640 N.E.2d 4 (3d Dist. 1994), a governmental entity had probable cause to seek a preliminary injunction to stop mining activities and, thus, it could claim immunity under Section 2-208. As noted above, township supervisors are not personally liable in connection with their service on a countywide public aid committee, just as a judge is immune from personal liability in connection with the performance of his or her duties as judge. 305 ILCS 5/11-8. Also, note that there may be a potential claim for this conduct under federal law.

15. Immunity for Actions Taken Pursuant to a Law Later Held to be Unconstitutional

Section 2-203 of the Act provides public officials and employees with immunity for their actions taken with reliance upon a statute, ordinance, or regulation that is later found unconstitutional or invalid. For this immunity to apply, the following elements must be established: 1) the employee must have acted in good faith; 2) the employee must have acted without malicious intent; and 3) the employee would not have been liable if the law was constitutional or valid. 745 ILCS 10/2-203. This immunity has been applied to bar a claim brought against public officials who relied upon a statute subsequently found unconstitutional that had prohibited handicapped persons from serving as firefighters. Melvin v. City of Frankfort, 93 Ill. App. 3d 425, 417 N.E.2d 260 (5th Dist.1981).

16. Common Law Public Officials' Immunity

Courts have upheld the insulation from personal liability afforded to public policy decision makers by the Tort Immunity Act. Fustin v. Bd. of Educ. of Cmty. Unit Dist. No. 2, 101 Ill.App.2d 113 (5th Dist. 1968). For decades, however, courts circumscribed the statutory grant of immunity by reading a common law exception into the Act for situations in which a public official acted with "corrupt or malicious motives." Thiele v. Kennedy, 18 Ill.App.3d 465 (3d Dist. 1974). The judicial philosophy undergirding such decisions was to prevent public officials from hiding behind the cloak of immunity by maliciously or intentionally misusing

their powers of office. Young v. Hansen, 118 Ill.App.2d 1 (2d Dist. 1969). This longstanding common law exception, however, was abolished in Village of Bloomingdale v. CDG Enterprises, Inc., 196 Ill.2d 484 (2001). Specifically, in Village of Bloomingdale the supreme court affected a sea change in the application of common law exceptions to the Act by vitiating the longstanding exception to governmental immunity that had previously been crafted in cases where the public entity or official's tortious behavior was demonstrably rooted in "corrupt or malicious motives." *Id.* at 494. In so doing, the Bloomingdale court relied on the absence of any exception carved out in the Tort Immunity Act for corrupt or maliciously motivated tortious behavior, together with the well-established precedent for refusing to read into the Act an exception to immunity for willful, wanton conduct unless it is explicitly expressed in a particular section of the statutory scheme. *See* In re Chi. Flood Litig., *supra*. Consequently, public officials may still be liable for willful, wanton conduct if so indicated in a relevant statutory section but will not be independently held accountable because they acted corruptly or maliciously. In overruling Young and its progeny, the Bloomingdale court pointed out that decisions recognizing a "corrupt and malicious motive" exception to the grants of immunity provided in the Tort Immunity Act did not take into account the 1970 Illinois Constitution's abolishment of sovereign immunity except where the general assembly expressly provides otherwise. This ruling effectively served to eradicate any vestiges of common law doctrines from the tort immunity context and to relegate government tort immunity to the purely statutory realm. *Id.* at 499.

In Kinzer v. City of Chi., 128 Ill.2d 437 (1989), the Supreme Court first held that the Tort Immunity Act did not apply to a taxpayer's breach of fiduciary duty suit against public officials to recover funds expended without prior appropriation because the action had its origins in agency and contract rather than in tort. Once the Tort Immunity Act was rendered inapplicable, however, the Illinois Supreme Court applied the common law public officials' immunity doctrine to protect the officials from individual liability for performing their discretionary duties in good faith. In so doing, the Kinzer court determined that because the officials were advised by corporation counsel that the contracts requiring the expenditures were legal and because past practices were followed in making the expenditures, they had no reason to believe that they were acting illegally. Thus, the doctrine of common law public officials' immunity, which is unrelated to the Tort Immunity Act, was construed to protect government officials exercising good faith in performing their discretionary duties.

XIII. CONTRACTS, INSURANCE AND ETHICS

A. Prohibited Interests in Contracts

Township and road district officers are prohibited from having interests in township/road district contracts. 50 ILCS 105/3. No township/road district officer or employee may be interested directly or indirectly, in his or her own name or in the name of any other person, association, trust, or corporation, in any contract for work, materials, profits of work or materials, or services to be furnished or performed for the township/road district or for any person operating a public utility wholly or partly within the territorial limits of the township/road district. 60 ILCS 1/85-45; 605 ILCS 5/6-411.1. For a detailed list of permissible interests in contracts, see Section B, below.

1. Indirect Conflicts

Note that these sections prohibit both direct and indirect interests in township contracts. One example of an indirect interest is when a township officer is employed by a company seeking a township contract.

2. Contracting with Relatives

A public officer will not be considered to have violated these statutes, however, when the public entity lets a contract to a company owned by a relative, such as a spouse. Op. Att'y Gen. (Ill.) 93-014 (1993). Nor are the statutes violated if the public entity employs the officer's spouse. People v. Simpkins, 45 Ill. App. 3d 202, 359 N.E.2d 828 (5th Dist. 1977); Hollister v. North, 50 Ill. App. 3d 56, 365 N.E.2d 258 (4th Dist. 1977).

3. Contracts that Benefit the Official as a Member of the Public

Further, the courts have determined that a public officer may benefit from his or her actions as an officer in the same manner as does the general public, without it being considered a statutory conflict. In Croissant v. Joliet Park Dist., 141 Ill.2d 449, 566 N.E.2d 248 (1990), a park district commissioner's vote to participate in a block grant program to improve an airport owned by the park district was challenged because the commissioner owned an aviation business that was a tenant of the airport. The Illinois Supreme Court ruled that the commissioner had not engaged in a prohibited act because he was not directly or indirectly financially interested in the transaction and because the only benefit

flowing to the commissioner from his vote was the improvement of the airport, which benefited the public at large.

4. Conflicts Before a Contract is Executed

Judicial interpretation of the prohibitions specified in the Public Officer Prohibited Activities Act, 50 ILCS 105/3, confirms that public officials must be wary of conflicts related to contracts even before the contracts are executed. In People v. Savaiano, 31 Ill. App. 3d 1049, 335 N.E.2d 553 (2d Dist. 1975), *aff'd*, 66 Ill.2d 7, 359 N.E.2d 475 (1976), the court upheld the conviction of a commissioner of the DuPage County Forest Preserve District who had a one-fourth interest in sixty acres of land that the district sought to acquire. The defendant had chaired committee meetings during which negotiations were conducted with his co-owners of the property. The negotiations resulted in an agreement regarding the purchase price and a committee recommendation to purchase the property. Before the purchase was approved by the entire commission, the defendant sold his interest in the property. Ultimately, the deal fell through. The defendant was indicted and convicted of having an improper interest in the contract. While the defendant had argued that because a contract was never executed, he could not have had an improper interest in a contract, the appellate court interpreted the statute broadly, construing "contract" to "include the whole bargaining process which leads up to the completion of a binding contract or agreement with the governmental agency." In so holding, the court found that the commissioner could have influenced the decision to purchase the property and that he was in a position to boost the value of the land to his benefit. The court further noted that the defendant did profit from selling his interest even though the contract did not go through.

5. Abstention From Voting

A public officer can violate these statutory prohibitions without actually voting or acting on the contracts. In Peabody v. Sanitary Dist. of Chi., 330 Ill. 250, 161 N.E. 519 (1928), the sanitary district awarded a contract to the lowest bidder for the project, which happened to be a company of which the district's treasurer was a vice-president, director, and stockholder. The court held that the treasurer violated the prohibition against interests in contract, even though the treasurer did not vote on the award of the contract and was not directly involved in the letting of the contract. The court reasoned that, as the financial officer of the district, the treasurer could have been asked for an opinion as to whether the company was financially responsible and thus could have been called upon to act.

The court found that "the question is not what [the treasurer] did, but what he might be called upon to do, which determines the application of the statute."

The rationale behind this opinion is consistent with the Illinois Supreme Court's later statement in Brown v. Kirk, 64 Ill.2d 144, 355 N.E.2d 12 (1976), which held that these statutes are designed to prevent the actual bad faith abuse of powers as well as "the creation of relationships which carry in them the potential of such abuse, by removing the possibility of temptation."

6. Consequences of a Prohibited Act

When a public officer votes on an action in which the officer has a prohibited interest, the entire action of the township may be rendered void. However, an action may still be void even if the interested party has not voted and has not been subjected to criminal charges. Mulligan v. Vill. of Bradley, 131 Ill. App. 3d 513, 475 N.E.2d eventually gave the appellate court the opportunity to comment on conflicts. Here, the former village president successfully urged the village board to create the position of village administrator and then to hire him to fill the position. These actions were approved at a village board meeting over which the president presided, although the president abstained from voting on either motion. After the motions passed, the president resigned from his office and accepted the offer to serve as the village administrator for a three-year period. Two years later, the new village president, a political foe of the administrator, fired the administrator who promptly sued the village for breach of contract, among other issues. In analyzing the ousted administrator's claim, the court held that the administrator's original contract with the village was void and unenforceable because it violated the statute prohibiting officers from having an interest in a municipal contract. The court, therefore, upheld the trial court's dismissal of the administrator's lawsuit.

A township official who violates any of these statutory provisions is guilty of a Class 4 felony. Additionally, the office shall become vacant. 50 ILCS 105/4.

7. Common Law Conflicts of Interest

In addition to avoiding statutory conflicts, which result from a public officer's actual pecuniary interest in a contract let by the public entity, public officials must also be careful to avoid common law conflicts of

interest that may occur even though the official may not commit a statutory offense. Such a common law conflict of interest can arise whenever an official action could result in a personal advantage or disadvantage to the interested official. If a public official finds himself or herself in such a situation, the official must disqualify himself or herself from engaging in the activity. Op. Att'y Gen. (Ill.) 93-010 (1993). If an officer fails to disqualify himself or herself from such an activity, the entire action will be voidable. Op. Att'y Gen. (Ill.) S-1230 (1977).

For example, when the chairman of a county board's insurance committee participated in a process that resulted in the award of an insurance contract to an insurance agency from which the chairman leased space and with which the chairman did business, the chairman had a conflict of interest under the common law and should have disqualified himself from participating in the process. Op. Att'y Gen. (Ill.) No. 93-010 (1993). Similarly, a member of a county zoning board of appeals had a common law conflict with regard to a zoning variation where the applicant for the variation was a company in which the board member was a stockholder and director. Op. Att'y Gen. (Ill.) S-1230 (1977).

B. Permissible Interests in Contracts

Elected or appointed members of the township may provide materials, merchandise, property, services, or labor if:

1. the contract is with a person, firm, partnership, association, corporation, or cooperative association in which the interested member of the governing body of the township has less than a 7½ % share in the ownership; and

2. the interested member publicly discloses the nature and extent of his or her interest before or during deliberations concerning the proposed award of the contract; and

3. the interested member abstains from voting on the award of the contract, though he or she shall be considered present for the purposes of establishing a quorum; and

4. the contract is approved by a majority vote of those members presently holding office; and

5. the contract is awarded after sealed bids to the lowest responsible bidder if the amount of the contract exceeds

$1,000, or awarded without bidding if the amount of the contract is less than $1,000; and

6. the award of the contract would not cause the aggregate amount of all contracts awarded to the same person, firm, association, partnership, corporation, or cooperative association in the same fiscal year to exceed $25,000.

In addition, elected or appointed township members may provide materials, merchandise, property, services, or labor if:

1. the award of the contract is approved by a majority vote of the governing body of the township, provided that any interested member shall abstain from voting; and

2. the amount of the contract does not exceed $1,000; and

3. the award of the contract would not cause the aggregate amount of all contracts awarded to the same person, firm, association, partnership, corporation, or cooperative association in the same fiscal year to exceed $1,000; and

4. the interested member publicly discloses the nature and extent of his or her interest before or during deliberations concerning the proposed award of the contract; and

5. the interested member abstains from voting on the award of the contract, though he or she shall be considered present for the purposes of establishing a quorum; and

6. no other vendor is available within a 25-mile radius of the township.

A contract for the procurement of public utility services by a township with a public utility company is not barred by one or more members of the governing body being an officer or employee of the public utility company, holding an ownership interest of no more than 7½ % in the public utility company, or holding an ownership interest of any size if the township has a population of less than 7,500 and the public utility's rates are approved by the Illinois Commerce Commission. 60 ILCS 1/85-45.

Again, any officer who violates this prohibition against pecuniary interest in contracts is guilty of a Class 4 felony. Furthermore, any office

held by the person so convicted becomes vacant. 50 ILCS 105/4; 60 ILCS 1/85-45; 605 ILCS 5/6-411.1(e).

Nothing precludes a contract of deposit of monies, loans, or other financial services by a township with a local bank or local savings and loan association regardless of whether a member or members of the governing body of the township are interested in the bank or savings and loan association as an officer or employee or as a holder of less than 7 ½% of the total ownership interest. A member or members holding such an interest in a contract is not deemed to be holding a prohibited interest. The interested member or members of the governing body must publicly state the nature and extent of their interest during deliberations concerning the proposed award of a contract but cannot participate in any further deliberations concerning the proposed award or vote on a proposed award. Any member or members abstaining from participation in deliberations and voting, however, may be considered present for purposes of establishing a quorum. Award of such a contract requires approval by a majority vote of those members presently holding office. Consideration and award of any contract in which a member or members are interested may only be made at a regularly scheduled public meeting of the governing body of the township. 60 ILCS 1/85-45.

See also Chapter XXIII(A)(2)(f) for a discussion of the Highway Commissioner's pecuniary interest in leases.

C. Disclosure of Economic Interests

The Illinois Governmental Ethics Act requires a variety of public officials, candidates, and employees to disclose economic interests that may relate to their township office or entity. 5 ILCS 420/4A-101, *et seq.* A person required to disclose such information must file a statement of economic interests with the county clerk's office. 5 ILCS 420/4A-106.

1. Information That Must be Disclosed

The information that must be disclosed in the statements of economic interests is set forth in 5 ILCS 420/4A-102, and the form of the statement is set forth in 5 ILCS 420/4A-103. The Act allows units of local government to enact financial disclosure requirements that may require more information than required in the Act. 5 ILCS 420/4A-101. Most people can fill out the statement in less than five minutes. People who are not employed as doctors, lawyers, engineers, architects, or in other professional positions will find that some of the items on the form may be

marked "Not Applicable" (Questions 2 and 3). Further, people who are not employed by any governmental units other than the one for which the statement is being filed will find that Question 7 is not applicable. Questions 4 and 8 are only applicable to people who have had a federal tax capital gain of at least $5,000 or received a gift from an "entity" of over $500 in the reporting year.

Parties filing statements of economic interests must be careful to include the interests of a spouse or any other party if such person's finances are constructively controlled by the person filing the statement. For example, a family business or a $5,000 capital gain resulting from the sale of property held in a trust either controlled by the person filing the statement or naming that person as a beneficiary must be disclosed. However, if the spouse's business interests are separate, they need not be disclosed, perhaps even if the spouses file a joint tax return.

2. Filing Deadlines

Township officials and employees who are required to file statements of economic interests must file them with the county clerk of the county in which they reside by May 1 each year. 5 ILCS 420/4A-105. Candidates for office must file their statements no later than the statutory deadline for qualifying for nomination. If the candidate is an incumbent township officer who has previously filed a statement of economic interests with respect to his or her township office, the candidate must still file another statement of economic interests with the county clerk solely in relation to his or her candidacy. Such statement must be filed within the same calendar year as the year in which the candidate files his or her nomination papers. Jenkins v. McIlvain, 338 Ill.App.3d 113, (1st Dist. 2003). All other governmental employees or officials who are required to file a statement must do so at the time of initial employment or appointment and then on May 1 of each year thereafter. A person who is required to file such a statement but fails to do so may be fined and, in addition, may be ineligible for or required to forfeit his or her office or position of employment. 5 ILCS 420/4A-105, 4A-107. Further, a person who willfully files a false or incomplete statement may be charged with, and convicted of committing, a Class A misdemeanor. 5 ILCS 420/4A-107.

The county clerk is required to notify any person required to file a statement of economic interest by May 1 and who fails to do so. That person must file the delinquent statement by May 15, along with a $15 late filing fee. Failure to file by May 15 will subject that person to a

penalty of $100.00 for each day from May 16 to the date of filing, in addition to the $15.00 late filing fee. Failure to file by May 31 shall result in ineligibility for or forfeiture of office or position of employment. 5 ILCS 420/4A-105, 4A-107. If the county clerk fails to timely send a notice of failure to file, no forfeiture shall result if a statement is filed within 30 days of actual notice of the failure to file.

Anyone who takes office or otherwise becomes required to file a statement within 30 days prior to May 1 of any year may file at any time on or before May 31 without penalty. If such a person fails to file by May 31, the county clerk shall notify the person within seven days that the statement must be filed by June 15, along with a $15.00 late filing fee. Filings after June 15 will subject the person to a $100.00 per day penalty plus the $15.00 late filing fee from June 16. Failure to file by June 30 shall result in a forfeiture of office or employment. 5 ILCS 420/4A-105, 4A-107.

3. Penalties for Non-Compliance

Section 4A-107 provides that, where a person required to file a statement with the county clerk by either May 31 or June 30 fails to do so, the appropriate State's Attorney shall bring an action in quo warranto against the person who has failed to file the statement. This step is consistent with Article XII, Section 2 of the Constitution of 1970, which provides: "Failure to file a statement within the time prescribed shall result in ineligibility for, or forfeiture of, office." However, an action in quo warranto is generally advanced to remove a person who is unlawfully holding an office from that office. Accordingly, it is not clear whether the action in quo warranto would be the appropriate means to remove a candidate from a ballot for failure to file a statement. Whether or not quo warranto is appropriate, it is not the exclusive means of removing an ineligible candidate from the ballot. Individual voters can file objections to the nomination petitions of candidates with the appropriate board, citing the candidate's failure to file a statement of economic interests as grounds for challenging the nomination petitions of candidates for office. The Election Code specifies that nomination papers "are not valid if the candidate . . . fails to file a statement of economic interests . . . ." 10 ILCS 5/10-5.

D. Other Township Contracts

1. Contracts with Community Mental Health Boards

The township board may enter into contractual agreements with any community mental health board having jurisdiction within the township. 60 ILCS 1/190-5. The agreements may provide for funding and rendition of mental health services administered by either entity, and the mental health board may properly expend funds pursuant thereto. Op. Att'y Gen. (Ill.) 98-011 (1998). The agreements must be in writing and provide for the rendition of services by the community mental health board to the residents of the township. For this purpose, the township board is authorized to expend its funds and any funds made available to it through the Federal, State and Local Assistance Act of 1972. 60 ILCS 1/190-5.

If a township is not included in a mental health district organized under the Community Mental Health Act, the township board may provide mental health services (including alcoholism and drug abuse services; and for persons with intellectual disabilities) for residents of the township by disbursing funds, pursuant to an appropriation, to mental health agencies approved by the Department of Human Services, alcoholism treatment programs licensed by the Department of Public Health, drug abuse facilities approved by the Department of Human Services, and other alcoholism and drug abuse services approved by the Department of Human Services. To be eligible for township funds disbursed under this Section, an agency, program, facility, or other service provider must have been in existence for more than one year and serve the township area. 60 ILCS 1/190-10.

2. Contracts for Insurance

The township board may make contracts relating to insurance; however, the duration of the contract cannot exceed the board term by more than one year. The township board must include in the township's annual appropriation for each fiscal year an appropriation of a sum of money sufficient to pay the amount which, by the terms of the contract, is to become due and payable during the current fiscal year. 60 ILCS 1/30-41. Townships often purchase insurance through risk pools, such as the Township Officials of Illinois Risk Management Association ("TOIRMA"). For more information about participating in the TOIRMA program, call (800) 252-5059.

3. Township Refuse and Disposal

Please refer to Chapter III(C)(8) and Chapter XXIII(G)(8) for a discussion of this topic.

4. Special Refuse/Recycling Programs

The township board, when authorized by the electors of the unincorporated area of the township, may make contracts with any city, village, or incorporated township, or with any person, corporation, or county for more than one year and not more than 15 years relating to the composting or recycling of garbage, refuse, and ashes within unincorporated areas of a township, or relating to the collection and final disposition of garbage, refuse, and ashes within the unincorporated area of the township. 60 ILCS 1/210-15.

The township board may make a contract that requires the declaration of a special refuse collection and disposal district. 60 ILCS 1/210-15. When the board does so, the board is to include in the annual budget and appropriation ordinance for each fiscal year the money to pay the contract. 60 ILCS 1/210-20. This money is gained by taxing the special refuse collection and disposal district itself. The township may then adopt ordinance rules and fines relating to the collection and final disposition of the refuse. 60 ILCS 1/210-25.

A road district may now organize, administer, or participate in one or more recycling programs. 605 ILCS 5/6-132(a). Additionally, a road district may deliver wood chips, mulch, and other products generated in the act of tree maintenance by the district to the residents of the district on a first come, first serve basis or other method of random selection. The road district must provide adequate notice to the resident prior to the product being available and prior to the delivery of the product, which shall include the amount of the product being delivered. 605 ILCS 5/6-132(b).

A county, however, may itself adopt a waste management plan. At that time, if a township within the county is operating a recycling program that substantially conforms with or exceeds the requirements of the county's recycling program, the township may continue to operate its recycling program. Under this scenario, the township is considered to be implementing the county plan. Of course, a township can also implement a recycling program that is more stringent than the county plan. 415 ILCS 15/7.

Note: The township board may, however, enter into direct agreements (without a referendum) to carry out recycling programs in unincorporated areas of the township. The township board may by ordinance adopt rules and regulations relating to recycling programs in incorporated areas. 60 ILCS 1/85-13(f). The Attorney General has opined that this provision for recycling is a "narrow exception" to the referendum requirements for more expansive waste management programs detailed above and in 60 ILCS 1/210, *et seq.* 2000 Op. Atty. Gen. 15.

5. Contracts for Purchase of Fire, Rescue and Emergency Vehicles and Equipment

Any township having a population of less than 100,000 may acquire fire protection, rescue, and emergency vehicles and equipment. 60 ILCS 1/200-5. The money for this purchase may be raised through a tax levy. 60 ILCS 1/200-10. Other than by tax levy, the proposition for the acquisition of fire protection, rescue, and emergency vehicles and equipment may be submitted to a vote of the people of the township. 60 ILCS 1/200-15.

6. Ambulance Services

In any township with a population between 10,000 and 35,000 that lies within a county with a population between 275,000 and 400,000, the township board is authorized to provide for ambulance services through an intergovernmental cooperation agreement with any other unit of local government. 60 ILCS 1/195-5.

7. Primary Health Care Services

In any township in a county with a population of 25,000 or less containing a federally designated health manpower shortage area, the township board may provide for primary health care under an intergovernmental cooperation agreement with another unit of local government or under contract with physicians, a physician group, a professional service corporation, a medical corporation, or a federally qualified health center. 60 ILCS 1/182-5.

E. Misconduct of Officers – Penalty

Every township officer who is guilty of a palpable omission of duty or who is guilty of willful and corrupt oppression, misconduct, or misfeasance in discharging the duties of the office shall be guilty of a business offense and on conviction shall be fined not more than $1,000.

60 ILCS 1/55-37. This, of course, is a default provision when other specific penalties mentioned above would not apply.

F. The Gift Ban Act

1. Background

In an effort to combat perceived ethical and financial irregularities in State government, the General Assembly enacted the State Officials and Employees Ethics Act, 5 ILCS 430, *et seq.*, to replace the former Gift Ban Act, which was repealed after being struck down as unconstitutional by a state trial court. The current version of the Act establishes standards for the type and amount of gifts that may be accepted by public officials and employees. The Act, which applies to the spouses and immediate family members living with an elected or appointed official or employee, may be violated both by the offer of the banned gift and also by its acceptance. 5 ILCS 430/10-10. The Legislature required all local governmental bodies to pass ordinances about ethics that were at least as stringent as the standards set forth in the State Officials and Employees Ethics Act.

2. Banned Gifts & Banned Givers

The gift ban provisions, codified at 5 ILCS 430/10-10, 10-15, 10-30 and 10-40, begin by banning either the intentional solicitation or acceptance of any gift from a "prohibited source" or a gift found to be in violation of any Federal or State statute, rule, or regulation. A gift includes any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, and honoraria for speaking engagements related to or attributable to government employment or the official position of a board member or employee. 5 ILCS 430/1-5.

A prohibited source means any person or entity who is seeking official action from the officer or employee; does business or seeks to do business with the official or employee; conducts activities regulated by the official or employee; or has an interest that may be substantially affected by the performance or non-performance of the official duties of the official or employee. 5 ILCS 430/1-5. Basically, prohibited sources are lobbyists and other persons or entities seeking to influence official activities via their gifts.

3. Exemptions

Clearly, the intent of the Act is to reduce both corruption in government and the appearance of corruption in government. In light of this purpose, the Legislature exempted certain types of gifts from certain types of people generally not considered suspect because of the unlikelihood of bribery or corruption in such situations. As such, educational materials, limited travel expenses related to official business, gifts from close relatives or friends primarily on the basis of personal friendship, testamentary gifts and bequests, and limited food and drink expenses are all exempted from the purview of the Act. 5 ILCS 430/10-15. For a complete list of exemptions, refer to the Act, or consult a township attorney.

If an officer or employee receives a gift that would be prohibited under these laws, the officer or employee, spouse, or immediate family member does *not* violate the Act if the recipient promptly takes reasonable action to return a gift from a prohibited source to its source or donates the gift or an amount equal to its value to a tax-exempt charity under Section 501(c)(3) of the Internal Revenue Code. 5 ILCS 430/10-30.

G. Prohibited Political Activity

The State Officials and Employees Ethics Act, 5 ILCS 430, *et seq.,* also restricts the use of governmental funds and facilities for political purposes. The law applies to all units of local government, including townships. 5 ILCS 430/70-5. Public officers and employees are prohibited from performing any prohibited political activity on "compensated time" and from intentionally misappropriating any governmental property or resources by engaging in any prohibited political activity for the benefit of any campaign for elective office or any political organization. 5 ILCS 430/5-15. Specific prohibitions include the following:

- No officer or employee may intentionally perform any prohibited political activity during any compensated time;

- No officer or employee may intentionally use governmental property or resources in connection with any prohibited political activity;

- No officer or employee may intentionally require any other officer or employee to perform any prohibited political activity as a part of the officer or employee's duties, as a

condition of employment, or during any compensated time off (vacation, holidays, personal time);

- No officer or employee shall be required to participate in any prohibited political activity in consideration for that officer or employee being awarded additional compensation or benefit, whether in the form of a salary adjustment, bonus, compensatory time off, continued employment, or otherwise, nor shall any officer or employee be awarded additional compensation or any benefit in consideration for his or her participation in any prohibited political activity. 5 ILCS 430/5-15.

1. Compensated Time

The statute defines "compensated time" as any time worked by or credited to an employee that counts toward any minimum work time requirement imposed as a condition of employment but does not include any designated holiday or any period when the employee is on leave of absence. 5 ILCS 430/1-5. Compensated time does not include vacation, personal, or compensatory time off.

2. What is a Prohibited Political Activity?

The following constitute prohibited political activities, pursuant to 5 ILCS 430/1-5:

- Preparing for, organizing, or participating in any political meeting, political rally, political demonstration, or other political event;

- Soliciting contributions, including but not limited to purchasing, selling, distributing, or receiving payment tickets for any political fund raiser, political meeting, or other political event;

- Soliciting, planning the solicitation of, or preparing any document or report regarding anything of value intended as a campaign contribution;

- Planning, conducting, or participating in a public opinion poll in connection with a campaign for elective office or on behalf

of a political organization for political purposes or against any referendum question;

- Surveying or gathering information from potential or actual voters in an election to determine probable vote outcome in connection with a campaign for elective office or on behalf of a political organization for political purposes or for or against any referendum question;

- Assisting at the polls on election day on behalf of any political organization or candidate for elective office or for or against any referendum question;

- Soliciting votes on behalf of a candidate for elective office or a political organization or for or against any referendum question or helping in an effort to get voters to the polls;

- Initiating for circulation, preparing, circulating, reviewing, or filing any petition on behalf of a candidate for elective office or for or against any referendum question;

- Making contributions on behalf of any candidate for elective office in that capacity or in connection with a campaign for elective office;

- Preparing or reviewing the responses to candidate questionnaires;

- Distributing, preparing for distribution, or mailing campaign literature or other campaign material on behalf of any candidate for elective office or for or against any referendum question;

- Campaigning for any elective office or for or against any referendum question;

- Managing or working on a campaign for elective office or for or against any referendum question;

- Serving as a delegate, alternate, or proxy to a political party convention;

- Participating in any recount or challenge to the outcome of any election.

In addition to prohibiting the outright misappropriation of public funds, the Act also bars a subtler use of public monies. The law cannot and does not prohibit officials and employees from engaging in political activity voluntarily while off duty without governmental compensation. Therefore, if an employee voluntarily engages in political activities during non-work hours, including non-work hours where the employee is compensated, such as vacation or personal days, he or she may do so. Moreover, pursuant to a series of federal cases spanning over the several decades, local government employees cannot be discharged or demoted because of their political views, even without other contractual or tenure rights explicitly offering protection.

H. Bidding Process for Township Contracts

1. Township and Road District Bidding Statutes

Before making certain purchases and before entering into certain service and materials contracts, townships and road districts must initiate a competitive bidding process for selecting the provider. The following three township bidding statutes establish the basic obligations. Township officials should consult with TOI or their township attorney before acting pursuant to these statutory provisions.

a. Purchase of Services, Materials, Equipment, and Supplies for Townships in Excess of $20,000 (60 ILCS 1/85-30)

Any purchase by a township for services, materials, equipment, or supplies in excess of $20,000 (other than professional services) shall be contracted for in one of the following ways:

1. By a contract let to the lowest responsible bidder after advertising for bids at least once (i) in a newspaper published within the township, or (ii) if no newspaper is published within the township, then in one published within the county, or (iii) if no newspaper is published within the county, then in a newspaper having general circulation within the township;

2. By a contract let without advertising for bids in the case of an emergency, if authorized by the township board.

These requirements do not apply to townships contracting with the federal government. 60 ILCS 1/85-30. Additionally, a township hospital may contract with an adjoining nursing home without competitive bidding. Bohleber v. Carmi Township Hospital, 30 Ill.App.3d 969 (5th Dist. 1975).

b. Road District Maintenance Contracts in Excess of $20,000 (605 ILCS 5/6-201.7, 605 ILCS 5/6-408)

The highway commissioner is responsible for the construction, maintenance and repair of roads within the district, letting contracts, employing labor and purchasing material and machinery therefore, subject to certain limitations. 605 ILCS 5/6-201.7 Contracts for constructing and repairing roads and bridges on road district lines shall be let by the highway commissioners of the two districts; the commissioners shall meet and act together when taking action upon the letting of such contract for the construction or repair of such roads and bridges, or acceptance of the work. 605 ILCS 5/6-408. Except for professional services, when the cost of construction, materials, supplies, new machinery, or equipment exceeds $20,000, the contract for such construction, materials, supplies, machinery, or equipment shall be let to the lowest responsible bidder after advertising for bids at least once and at least 10 days prior to the time set for the opening of such bids in a newspaper published within the township or road district, or, if no newspaper is published within the township or road district then in one published within the county, or if no newspaper is published within the county then in a newspaper having general circulation within the township or road district, but, in case of an emergency, such contract may be let without advertising the bids. For purposes of this Section, “new machinery or equipment” shall be defined as that which has been previously untitled or that which shows fewer than 200 hours on its operating clock and that is accompanied by a new equipment manufacturer’s warranty. 605 ILCS 5/6-201.7.

c. Township Waterworks Construction Projects in Excess of $20,000 (60 ILCS 1/205-105(a))

All contracts for construction work on township waterworks facilities whose estimated cost will exceed $20,000 shall be let to the lowest responsible bidder after publication of notice for bids. Notice for bids shall be published once in a newspaper published and having general circulation in the township, if there is one. If no such newspaper exists, notice for bids shall be published in a newspaper published and having general circulation in the county. Notice for bids shall be published at

least 10 days before the date set for receiving bids. Bids shall be opened and publicly read, and an award shall be made to the lowest responsible bidder within 15 days after the receipt of bids. 60 ILCS 1/205-105(a).

2. Township Construction Contracts - Application

For construction contracts, once the township or road district has initiated the process through the required notices above, if the contract is to be awarded, it must go to the lowest responsive bid submitted by a "responsible" contractor. 60 ILCS 1/85-30; 605 ILCS 5/6-201.7; 60 ILCS 1/205-105(a).

a. Bid Packages

The process begins with a design professional (architect/engineer) who produces a set of "construction documents" for submission to the construction market for bidding. The construction documents include the bidding forms, the bidding requirements and instructions, detailed plans and specifications, the terms of the contract - including general and supplementary conditions - to which the successful bidder must agree, and any subsequent addenda modifying the original contract documents. The Contract Documents usually consist of the bid documents, drawings, and a "project manual." Together, they set forth the whole of the township or road district's expectations for the entire project.

Additionally, addenda must be issued to every contractor registered with the township or road district as being interested in the project (i.e., every "plan holder"). The duty to scrupulously copy every contractor with the addenda flows from the criminal code that forbids giving any prospective bidder an advantage or favorable treatment. 720 ILCS 5/33E-12.

The Project Manual should include procedures for a change order. Absent these procedures, certain findings under the Criminal Code must be made and documented. In those rare cases where the public construction contract does not set forth the procedure and limits of authority for changing the contract sum or time, then any change order (or series of change orders) that alters the contract sum by a total of $10,000 or more or that changes the time for completion by more than 30 days must be in writing. Before this type of a change order can be approved, the township or road district must formally determine that a) the circumstances said to necessitate the change in performance were not reasonably foreseeable at the time the contract was signed; b) the change

is germane to the original contract; or c) the change is in the best interest of the unit of government and authorized by law. 720 ILCS 5/33E-9.

The construction documents are essential to fulfill properly the competitive bidding requirements because they create a single point of reference by which to compare the competing bids. Although the architect/engineer is responsible for the initial preparation of the contract documents, the general and supplementary conditions for the contractors' agreements have important legal consequences. Accordingly, prior to putting the materials out for bid, the township's attorney should review the bid documents and general and supplementary conditions to establish, protect, and define properly the township's expectations, rights, and obligations. The attorney should also review multiple contracts for coordination of the legal terms between them.

b. Awarding the Bid to the "Lowest Responsible Bidder"

i. Responsiveness

Bids must conform to the requirements contained in the bidding documents. Although the township or road district need not reject a bid containing a minor variance or anomaly, it must reject any proposal containing a "material variance" from the specified requirements. A bid that contains a material variance is an unresponsive bid that may not be corrected after bids have been opened in order to make it responsive. Smith v. Intergovernmental Solid Waste Disposal Ass'n*.,* 239 Ill.App.3d 123, 605 N.E. 2d 654, 666 (4th Dist. 1992); Leo Michuda & Sons Co. v. Metro. Sanitary Dist. of Greater Chi., 97 Ill.App.3d 340, 344, 52 Ill. Dec. 869, 422 N.E. 2d 1078 (1st Dist. 1981). "The test of whether a variance is material is whether it gives a bidder a substantial advantage or benefit not enjoyed by other bidders." *Id.*

The line between minor and material variances cannot be drawn with certainty. The few reported opinions that exist turn on a case by case analysis of the standard as applied to the particular circumstances of each occurrence. *Cf.* Leo Michuda, *supra* (failure to disclose required list of minority and small business subcontractors constituted material variance because bidder would have an advantage in negotiating with subcontractors from knowing it submitted the low bid), and Williams Bros. Constr. v. Pub. Bldg. Comm'n. of Kane Cnty.*,* 243 Ill.App.3d 949, 612 N.E. 2d 890, 895 (2nd Dist. 1993). (failure to list subcontractors on bid form did not constitute a material variance because listing requirement was mere boilerplate). *See also* Bodine Electric of Champaign v. City of

Champaign, 305 Ill. App. 3d 431, 238 Ill. Dec. 368, 711 N.E. 2d 471 (4th Dist. 1999) (failure to submit full bid security gave bidder a substantial advantage in that the penalty for failure to honor bid would be less than that threatened against other bidder, thereby constituting a non-waivable material variance); Rossetti Contracting Co. v. Brennan, 508 F.2d 1039 (C.A.7 1975) (contractor's failure to submit the required commitment for minority hiring was a non-waivable material variance where bidding instructions indicated that such a failure would disqualify the bid from being considered responsive).

When challenged, the court is required to accord deference to the township or road district on the determination of materiality, so long as that determination has a reasonable basis. Bodine Electric of Champaign v. City of Champaign, 305 IllApp.3d 431, 439, 238 Ill. Dec. 368, 374, 711 N.E. 2d 471, 477 (4th Dist. 1999; Williams Bros. Constr. v. Pub. Bldg. Comm'n. of Kane Cnty., 243 Ill.App.3d 949, 612 N.E. 2d 890 (2nd Dist. 1993); *see also* Justice Linn's dissent on waiver of defects in George W. Kennedy Constr. Co. v. City of Chi., 135 Ill.App. 3d 306, 315, 90 Ill. Dec. 113, 119, 481 N.E. 2d 913, 919 (1st Dist. 1985) *vacated, dismissed,* 112 Ill.2d 70 (1986).

When none of the bids received are acceptable, the township or road district is permitted to reject all bids. Before the work is rebid, however, the township or road district should review the nature and scope of the work and the bidding documents to determine any inconsistency, confusion, or other aspect of the work caused or contributed to the receipt of bids that were unacceptable.

ii. Lowest Responsible Bidder

Submitting the low bid does not automatically guarantee that a bidder will be awarded the contract. Instead, the contract must be awarded to the lowest "responsible bidder." 60 ILCS 1/85-30; 605 ILCS 5/6-201.7; 60 ILCS 1/205-105(a). Whether a bidder qualifies as a responsible bidder is a matter of public interest, and the township or road district has discretion; however, choosing the lowest responsible bidder must be done without fraud, unfair dealing, or favoritism. *See* S.N. Nielson Co., v. Pub. Bldg. Comm'n., 81 Ill.2d 290, 410 N.E. 2d 40 (1980).

In determining responsibility, the township may consider, among other items, the credentials, financial information, bonding capacity, insurance protection, qualifications of the labor and management of the firm, and past experience. It also requires an analysis of the bidder's

ability to complete the contract. Under appropriate circumstances, social policy can also play a role in the award of a contract and justify an award to a slightly higher bidder undertaking affirmative action efforts or the training of the handicapped. Court St. Steak House Inc. v. Cnty. of Tazewell, 163 Ill.2d 159, 643 N.E. 2d 781, 785 (1994) (permitting award to second lowest bidder due to promise to hire handicapped workers).

The criteria used to determine responsibility should be contained either in the bidding instructions and contract documents or in the language of the procurement statute. In Doyle Plumbing and Heating Co. v. Bd. of Educ., Quincy Pub. Sch. Dist. No. 172, 291 Ill.App.3d 221, 225 Ill.Dec. 362, 683 N.E.2d 530 (4th Dist. 1997), *app. denied,* 174 Ill.2d 558 (1997), the school district was seeking to replace its boilers. The owner chose to award the project to the second lowest bidder because the lowest bidder was believed to be headquartered too far away to timely service any problems that might arise with the new boilers. Doyle, the lowest bidder, sued seeking an order that the School District must award the contract to it and won. The court examined the bidding requirements and terms of the contract and found no reference to distance or time requirements for service calls. Neither could the court find any statutory reference that would permit the School District to rely on such criteria to disqualify Doyle. Accordingly, the court ruled that the District must award the contract to Doyle. *See also* Court St. Steak House Inc. v. Cnty. of Tazewell, 163 Ill.2d 159, 643 N.E. 2d 781, 785 (1994).

Further, a township or road district should carefully document the facts leading to its decision to award the contract to an entity other than the low bidder; this documentation should include opinion letters from the architect/engineer and legal counsel, if appropriate. The township faces the risk of being sued for defamation for rejecting a bidder as not responsible, and careful documentation will be useful in overcoming such a charge. *See* Zaret v. Joliet Park Dist., 91 Ill.App.3d 225, 415 N.E. 2d 659, 47 Ill.Dec. 654 (3d Dist. 1980).

Where a public entity chooses to pre-qualify bidders, awarding the contract to anyone other than the lowest bidder will be difficult. Absent new information, claiming that a low bidder who has already been found qualified for the work should be passed over in favor of another contractor will be difficult if not impossible.

As demonstrated in Doyle Plumbing & Heating, *supra.,* unsuccessful bidders for a public contract have standing to bring suit seeking injunctive relief and an order that they be awarded the contract. *See also* Cardinal

Glass Co. v. Bd. of Educ. of Mendota Cmty. Consol. Sch. Dist. No. 86, 113 Ill.App.3d 442, 447 N.E. 2d 546 (3rd Dist. 1983). The putative successful bidder must be named as a party, as it is an indispensable party. Burt v. Bd. of Educ. of Coal City Cmty. Unit Sch. Dist. No. 1. 132 Ill.App.3d 393, 87 Ill.Dec. 500, 477 N.E.2d 247 (3rd Dist. 1985). As a practical matter, however, a disgruntled bidder has little incentive to pursue this remedy because the law does not allow an unsuccessful bidder to recover lost profits. Court St. Steak House Inc. v. Cnty. of Tazewell, 163 Ill.2d 159, 643 N.E. 2d 781, 786 (1994). By denying bidders the recovery of lost profits, the courts have made it easier for public owners to exercise discretion and, as a practical matter, has also shortened the period during which a lawsuit to challenge the decision may be brought.

3. Criminal Violations

a. Interfering With the Bidding Process

In addition to statutory and common law prohibitions against public officials having an interest in contracts, the Criminal Code also limits the actions public officials can take when a public entity goes out to bid. Article 33E of the Criminal Code makes it a felony for a public official to engage in several activities related to the solicitation or award of bids. With respect to the acquisition or disclosure of bidding information and interference with the bidding process, it is a crime for a public official or employee to:

1. knowingly open a sealed bid at a time or place other than those designated or outside of the presence of witnesses, as required by statute or ordinance;

2. knowingly disclose any information related to the terms of a sealed bid to an interested party, except as provided by law or if necessary to the performance of duties relating to the bid or if such disclosure also is made generally available to the public;

3. knowingly convey information concerning contract specifications or identity of certain subcontractors to potential bidders where including such terms or subcontractors in the bid would make it more likely to be accepted, except where allowed by law;

4. knowingly inform a bidder or someone offering a contract that the bid or offer will be accepted only if specified individuals are included as subcontractors;

5. knowingly award a contract based on criteria not publicly disseminated via the invitation to bid when such invitation is required by law or procedure (applies to officers only); or

6. knowingly authorize a change order that would cause a cost change of $10,000 or more or would alter the project completion date by 30 days or more, without written authorization from the public entity (applies to employees only).

See, 720 ILCS 5/33E-5, 6, 7 and 9.

The Criminal Code specifies that it is not a violation for a public officer or employee (1) to disclose the name of a person who has submitted a bid, requested bid specifications, or been awarded a public contract; (2) to convey information about acceptable alternatives to the specifications if the information is made generally available to the public and mailed to any person who has submitted a bid or requested bid specifications; or (3) to negotiate a reduction only in the price term with the lowest responsible bidder. *See* 720 ILCS 5/33E-12.

b. Kickbacks/Bid-Rigging/Bid Rotating

To knowingly provide, solicit, accept or attempt to accept any kickback related to a public contract is a crime. 720 ILCS 5/33E-7 (a)(1), (2). Further, failing to report an offer of a kickback to an appropriate law enforcement official is also a crime. 720 ILCS 5/33E-7(b).

Bid-rigging (illegally exchanging information with competing bidders) and bid rotating (scheming to bid in a manner that will cause contract awards to rotate or be distributed among those bidding on a substantial number of the same contracts) are also prohibited. Any person convicted of bid-rigging is barred from bidding on any public contract for five years. Any person convicted of bid rotating will be permanently barred from such bidding. 720 ILCS 5/33E-3, 4.

A township or road district may contract with a corporation where a former employee or agent of the corporation has been convicted of these offenses, if the corporation has: (a) been found not guilty, or (b) demonstrated to the township or road district that the commission of the

offense was neither authorized, requested, ordered or performed by a director, officer or high managerial agent of the corporation. 720 ILCS 5/33E-3, 4. All bids received by townships or road districts must contain a certification that the bidder is not barred from bidding as a result of a bid-rigging or bid rotating conviction. The township or road district shall provide the appropriate forms for such certification. 720 ILCS 5/33E-11.

I. Contract Forms

The Local Government Professional Services Selection Act makes special provisions for procedures to be used when local governments, including townships and road districts, enter into contracts for architectural, engineering and land surveying services. 50 ILCS 510/1, *et.seq*. The Act allows firms providing such services to file annually a statement of qualifications and performance data with the township/road district. 50 ILCS 510/4. The law also enables townships or road districts that may need these types of services to solicit firms by mailing or e-mailing them a notice requesting a statement of interest in the proposed project. Alternatively, the township or road district may place an advertisement in an English language daily newspaper of general circulation to request a statement of interest from the firms. The township may also place an advertisement on the township's website requesting a statement of interest in the specific project. The advertisement shall include a description of each project and state the time and place for interested firms to submit its letter of interest, statement of qualifications, and performance data, as required. 50 ILCS 510/4.

In evaluating a firm, the township or road district is required to base its decision upon an objective evaluation of the firm's qualifications, including personnel, past record and experience, performance data on file, willingness to meet time requirements, location, workload, and other qualifications-based factors. In accordance with the Act, townships are allowed to enter into discussions with and require presentations by the most qualified firms. However, a township is not permitted, before selecting a firm for negotiation under 50 ILCS 510/7, to require formal or informal, written or verbal estimates of costs or proposals in terms of dollars, hours required, percentage of construction cost, or any other measure of compensation. 50 ILCS 510/5. Upon narrowing its choice, the township or road district must choose one firm and at least two alternates in case the parties are unable to reach an agreement. If negotiations fail with all three firms, the township or road district must reevaluate the services requested and then compile a new list of no fewer than three qualified firms with which to renegotiate. 50 ILCS 510/6. The township or

road district, however, is not required to follow the Act's provisions when the expected cost of the services is less than $40,000 or in case of an emergency requiring immediate action. 50 ILCS 510/8.

Contracts for public works projects usually involve the use of standard form contract families. The most frequently used family of documents is that drafted by the American Institute of Architects. These contracts contain lengthy general conditions that will apply to all contracts. The documents are adapted for individual situations by the use of a section entitled "supplementary conditions" that deletes or modifies the general conditions and adds other terms. Although these standard documents serve as a good start in the drafting of a public works contract, townships and road districts must keep in mind that these documents may not adequately address their needs. As the parties push to complete the technical and aesthetic requirements for a project under a deadline that never seems long enough, the contract language is often left to the last minute. We strongly encourage public entities to demand that their design professionals provide copies of proposed contract forms, general conditions, and any supplementary conditions as soon as possible so that these conditions can be carefully reviewed and revised by the public entity and its attorney. Particularly important is the review and approval of the supplementary conditions and their inclusion in the construction contracts before the contracts are bid upon by the market because any change in how risks are apportioned by the contract after bidding would be considered a change eligible for a price increase.

Several common formats are used for public construction projects. Under the general contractor format, a public entity contracts with an architect or engineer for the design of the facility and then, after bidding, enters into another contract with a single general contractor for completion of the entire project. During construction, the design professional periodically visits the site to determine whether the work is proceeding in conformity with the design. A public entity may also contract with its design professional for additional services, which might include full-time supervision and inspectional services during construction.

J. Allocation of Risk in Public Works Contracts

Construction projects are fraught with risk. Several contractors, subcontractors, design professionals, staff and possibly even curious trespassers may be on site engaging in activities putting both themselves and others at risk. The potential for bodily injury, property damage, and

even death is always present. Financial risks are also important to consider. Standard construction contracts endeavor to protect the owner from construction-related risks through indemnity agreements, bonds, and insurance.

1. Indemnity Agreements

Standard construction contracts seek to protect the owner by requiring contractors to indemnify and hold harmless the owner from any damages arising out of construction activities even if the owner shares fault for the occurrence. This protection, however, has been nullified by the Construction Contract Indemnification for Negligence Act. 740 ILCS 35/.01, *et seq*. This statute provides that any provision in a construction contract that seeks to indemnify or hold harmlessly an owner from the owner's own negligence is void, against public policy, and unenforceable. 740 ILCS 35/1. Thus, the Construction Contract Indemnification for Negligence Act renders indemnification language seeking anything more than pro-rata indemnification void.

The Construction Contract Indemnification for Negligence Act, however, is not without its exceptions. Section 3 of the Act provides that it does not apply to agreements to purchase insurance or bonds. Courts have had a difficult time distinguishing between void indemnity language and a requirement that a contractor provide insurance indemnifying an owner. The cases turn on the physical location where the indemnity language is actually placed in the contract. Courts have held that a provision requiring the purchase of insurance to cover an indemnification obligation that is contained elsewhere in the contract is void because the insurance provision refers to void indemnification language contained elsewhere in the contract. If the indemnification language is unenforceable, incorporating it by reference in another provision of the contract is equally as unenforceable. Transcon. Ins. Co. v. Nat'l. Union Fire Ins., 278 Ill.App.3d 257 (1st Dist. 1996). On the other hand, an insurance provision that contains language establishing the scope of the indemnity obligation the insurance must meet has been held to be valid. St. John v. City of Naperville, 155 Ill.App.3d 919 (2d Dist. 1987). Since indemnification will not protect a township, it should seek to transfer risk by requiring the contractor to provide bonds and insurance.

2. Bonds

The Public Construction Bond Act, 30 ILCS 550/1, *et seq.*, requires that public entities entering into contracts for public works must require

every contractor to furnish a bond with “good and sufficient sureties” conditioned upon the completion of the contract and payment for labor and materials used in the work. Under certain circumstances, the statute allows for a letter of credit for contracts less than $100,000 instead of a bond. Before taking any adverse action against a contractor, a township should review the specific terms of the bonds it received to insure that the notice requirements and any other requirements of the bonds have been met.

The Public Construction Bond Act also gives any subcontractor who furnishes material or performs labor for a governmental public works project a right to sue on the bond in the name of the governmental body. In order to assert this right, the person who supplied the labor and materials must file a verified notice of the claim with the governmental body within 180 days after the last date work or materials were provided. A copy of the verified notice must also be sent to the contractor within 10 days of filing the notice with the governmental body. The claim must contain (1) the name and address of the claimant; (2) the name of the contractor; (3) the name of the person, firm or corporation by whom the claimant was employed or to whom he or it furnished material; (4) a brief description of the public improvement sufficient for identification; and (5) a description of the claimant’s contract as it pertains to the public improvement, including a description of the work performed and the total amount due and unpaid as of the date of the verified notice. 30 ILCS 550/2.

A 2012 amendment to the statute provides that no such action shall be brought more than one year after the date of the furnishing of the last item of work or materials by the claimant (30 ILCS 550/2, amended by Public Act 97-487, eff. Jan. 1, 2012). The statute previously provided that, although a notice could be filed, the surety company could not be sued any earlier than 120 days after the date the last work or materials were provided. The amendment therefore allows such actions to be filed much earlier than 120 days after the last work was performed but not later than a year thereafter. The amendment also eliminated an exception to these filing periods that previously allowed an earlier filing when the public entity and the contractor had entered into a final settlement prior to the expiration of the 120-day period. These amended limitations still require the matter to be resolved out of the normal course of the construction process. Under these circumstances, the only obligation of the governmental body is to furnish a certified copy of the bond or letter of credit to the plaintiff in the lawsuit.

The Public Construction Bond Act allows a subcontractor, who has no contractual relationship with the surety company, to sue the surety without involving the governmental entity for which the work was done. If a township neglects to get a required bond, a subcontractor or supplier of material could sue the township. Of course, if the governmental body has its own problems with the contractor and is involved in litigation with the surety company, then it would be interested in any lawsuit by a subcontractor that would draw down the funds available under the surety bond or under a letter of credit.

3. Insurance

Standard construction contracts typically require the contractor to purchase various types of insurance including, but not necessarily limited to, worker's compensation insurance, employer's liability insurance, comprehensive general liability insurance, completed operations insurance, automobile liability insurance, and umbrella liability insurance. The standard form contracts usually require owners to provide property (builders' risk) insurance and boiler and machinery coverages. However, in many cases, the obligation to purchase property insurance is changed so that it becomes the contractor's and not the owner's responsibility. In contracts with design professionals, professional liability insurance should be required of the architects and/or engineers.

In order to protect the owner, construction contracts typically require that the owner be named as an additional insured on all comprehensive general liability coverages, automobile liability coverages, umbrella liability coverages, and property insurance required of the contractor. In order to document compliance with this obligation, the standard contracts require the contractor to provide the owner with a certificate of insurance naming the owner and any design professional as additional insureds on all these required coverages. In order to prevent the coverage from being canceled or modified without the owner's knowledge, the contracts further provide that the certificates of insurance must require the contractor's insurer to give the township a specified number of days' notice (usually 30) before any cancellation or modification of the insurance. This language is usually included in a box at the right bottom of insurance certificates. The standard language only requires that the insurance company "endeavor" to notify the township of a change. With some persuasion, the language can be changed to include an absolute obligation to give written notice before the insurance coverage can be cancelled or modified.

Instead of being named an additional insured on insurance provided by the contractor, the owner can also require that the contractor purchase an owner's protective liability policy for the owner. Under an owner's protective liability policy, the full limits of insurance will be available to the township. In contrast, as an additional insured on insurance provided by the contractor, the limits of insurance available to the township are subject to being reduced by other claims against the contractor that may arise out of other projects the contractor is engaged in.

A township can sue for breach of contract if the contractor fails to purchase the insurance required. Jokich v. Union Oil Co. of Cal., 214 Ill.App.3d 906 (1st Dist. 1991). However, a public entity can waive the contractor's obligation to purchase insurance by allowing the contractor to complete the work and tendering full payment without demanding proof of insurance. Geier v. Hamer Enters., 226 Ill.App.3d 372 (1st Dist. 1992); Whalen v. K-Mart, 166 Ill.App.3d 339 (1st Dist. 1988). Courts, however, are not in agreement as to this result as they have also held that an owner did not waive a requirement that it be named an additional insured when no action was taken after receiving a certificate of insurance that did not name it as an additional insured. Lavelle v. Dominick's Finer Foods, 227 Ill.App.3d 764 (1st Dist. 1992). *See also* Lehman v. IBP Corp., 265 Ill.App.3d. 117 (3d Dist. 1994) (a letter requesting a renewal certificate of insurance naming the owner as an additional insured did not indicate an attempt to waive coverage). In order to avoid this murky area of the law, each contract should include language specifically stating that the contractor's obligation to purchase insurance cannot be waived by the township's action or inaction.

K. Standard Construction Contract Provisions

Although detailed analysis of every standard construction contract provision is beyond the scope of this section, our experience has shown that certain standard provisions tend to cause public entities difficulties. In addition to consultation with an attorney and close review of the entire contract, public entities should be particularly cautious of the following provisions:

1. Dispute Resolution

The standard contracts each provide for dispute resolution involving the architect or engineer and separate arbitrations with various parties. These contracts generally require written notice of any claim or dispute within a specified number of days. The claim or dispute must initially be

referred to either the architect or engineer for a decision. A decision from the architect or engineer is a condition precedent to pursuing any arbitration or litigation remedy. The failure to provide the required notice of a claim under the contract or the failure to obtain a decision from the architect or engineer in violation of the contract can preclude a township from recovering for a contractor's errors. Final claims resolution may, if arbitration provisions are left in place, also put the township at risk of inconsistent and adverse judgments. Accordingly, we recommend modification of these provisions so that all parties can be in one courtroom and can get an expeditious but complete decision.

2. Waiver of Claims By Final Payment

The standard contracts typically will contain a provision stating that the owner waives certain claims upon making final payment. Although the language of these sections tend to have many exceptions, deleting the clause in its entirety is best.

3. Waivers of Subrogation

Standard contracts provide that the owner waives any right of subrogation against the contractor to the extent that any property damage is covered by the owner's property insurance. This language may or may not be acceptable. If the township has conventional property insurance, it must determine that this clause is authorized and within the scope of the township's current insurance coverage.

4. Waiver of Consequential Damages

Consequential damages are those that do not flow directly and immediately from a breach of contract. These damages typically are recoverable to the extent the parties may reasonably have assumed that the damage could have been contemplated by the parties because of a breach of contract. The line between direct and consequential damages is anything but clear. In each case a public entity will need to determine whether a contractor's breach of contract exposes it to consequential damages and determine whether to accept or reject this clause.

5. Liquidated Damages

Each township or road district needs to make a policy judgment on whether to include a liquidated damages clause (which is available solely for the inconvenience of the public not having its improvement in a timely fashion and not as a substitute for actual damages or costs).

If anything, the above sections show that the variety of issues that arise in construction contracts require careful review and special consideration. We strongly recommend that each contract be carefully reviewed by an attorney. Although we have endeavored to address some of the common issues, each project tends to have its own unique concerns justifying individualized review, consideration and attention.

L. Prevailing Wage Act

The Prevailing Wage Act mandates that governmental entities require contractors to pay, in those situations where the Act applies, all laborers, mechanics, and other workers who are employed by or engaged in the construction or maintenance of public works at least the minimum prevailing rate of wage. 820 ILCS 130/1, *et seq.* A township awarding any contract for public works shall ascertain the general prevailing rate of hourly wages in the locality in which the work is to be performed for each craft or type of worker or mechanic needed to execute the contract. 820 ILCS 130/4. Bid specifications must list the rates that are ascertained. If a rate is changed by the Illinois Department of Labor during the bidding process or term of a contract, the revised rates must be paid by the contractor (but careful drafting of the contract can avoid a change order to the owner when this happens). The township is responsible for notifying the contractor and each subcontractor of the revised prevailing wage rates. A township shall discharge its duty to notify contractors of revised rates simply by inserting a written stipulation into its contracts stating that the Department of Labor periodically revises the prevailing wage rate, and the rates are available on the Department's official website. 820 ILCS 130/4(l). If the township performs the work without letting a contract, it must ascertain the prevailing rate of wages per hour in the locality and shall specify in a resolution or ordinance that it will pay no less than the specified rate. 820 ILCS 130/4.

The requirement to comply with the Prevailing Wage Act (to the extent that it applies) must be expressly stated in the Notice or Invitation for Bid (or Request for Proposal) and also expressly stated in the contract – even if the contract takes the form of a simple purchase order. The requirement must expressly state that it the subcontractors, if any, must also comply with the Act to the extent it applies to them.

Where the Act applies, the contractor is required , to file copies of certified payroll with the township, which is then required to keep it on file for a period of 3 years from the date of the last payment made before January 1, 2014, and for a period of 5 years from the date of the last

payment made on or after January 1, 2014, on the contract or subcontract for public works. If the contractor willfully fails to file certified payroll, the township should obtain an explanation in writing for the omission and place that explanation in the file. 820 ILCS 130/5. Although the statute specifies that the certified payroll should include the employees' social security numbers, the township should be careful to redact that and other information when producing copies of the records in response to a request under the Freedom of Information Act or from the Department of Labor.

The Prevailing Wage Act is enforced by the Department of Labor. Violations are prosecuted by the Attorney General. 820 ILCS 130/6. The Illinois Supreme Court has ruled that the prevailing wage to be paid by public entities for public works contracts is a matter of state, rather than local, concern.

M. Lien Claims Against Governmental Property

In Illinois, regular mechanic lien claims are not enforceable against work done on public property. Instead, contractors and subcontractors have different rights related to public entities which are the functional equivalent of mechanic's liens. See 770 ILCS 60/23 and 30 ILCS 550/2. These provisions allow the contractors to enforce their rights by recovering governmental funds but do not put public property at risk.

Section 23 of the Mechanic's Lien Act, 770 ILCS 60/23, provides a remedy for a person who has furnished material, apparatus, fixtures, machinery, or labor to any contractor having a contract for public improvements with a public entity. Any such subcontractor may establish a lien for the value of the goods or services on the "money, bonds or warrants" due to the contractor from the township. To perfect this lien, the person must, before receiving payment from the township, notify the clerk of his or her claim by a written notice and must furnish a copy of that notice to the contractor. The notice may be served by registered or certified mail or by delivery. The lien only attaches to money, bonds, warrants, or vouchers that are due to the contractor but that have not been paid at the time of the notice. Where a dispute has arisen between a contractor and a subcontractor, the contractor may demand that, within thirty days, the subcontractor notify the clerk of any claim that the subcontractor intends to make against the contractor.

The person claiming the lien must, within ninety days after giving such notice, commence a lawsuit by filing a complaint for an accounting and must, within the same period, notify the clerk that a lawsuit has been

commenced. A failure to commence the proceedings within ninety days after giving notice of the lien terminates the lien and bars any subsequent notices of lien for the same claim. In the event that a contractor believes that the claim is frivolous, the contractor can file its own lawsuit prior to the end of the ninety-day period asking the court to lift the effect of the lien notice. Where, however, the lien has been filed, the clerk has the duty to withhold payments to the contractor in an amount sufficient to pay the claim for ninety days. Upon the expiration of the ninety-day period, the money, bonds, or warrants so withheld shall be released to the contractor unless the person claiming the lien has instituted proceedings and delivered a copy of the complaint to the clerk. If the clerk receives a copy of a complaint, the clerk must continue to withhold payment to the contractor until the final adjudication of the lawsuit or until the clerk receives a court order directing a different action.

If the governmental body finds itself in the position of merely holding funds, which it knows are either due to the contractor or the subcontractor, it may pay over to the clerk of the circuit court a sum sufficient to pay the amount claimed, which will eventually be distributed by the court pursuant to a judgment or court order. In some counties, the clerk of the circuit court charges for holding these funds. In such instances, claimants often prefer that the township hold the money. A supervisor failing to comply with this statute is liable on his or her official bond to any claimant giving notice for the damages resulting from the violation. These damages may be recovered in a specific civil action in the circuit court.

Although a public entity, as the "stakeholder," is not a necessary party to such a lawsuit, it has been held to be a proper party. In the event that the contractor has defaulted on its contracting and the township has incurred damages as a result, the township may desire to use the funds it holds under the contract to pay to complete the project or otherwise reimburse itself for damages caused by the contractor. Under these circumstances, the township will want to be a party to the action brought by a subcontractor asserting a lien against such funds in order to assert the township's own claim to the funds as an affirmative defense. The township's claim to the funds to complete the project has priority over the subcontractor's lien claim. Gunther v. O'Brien Bros. Constr. Co., 369 Ill. 362 (1938).

When several notices are given to the township and the township is holding only limited funds, no claim is given priority over another. Instead, all persons filing notices are to be paid pro rata amount in

proportion to the amounts due under their respective contracts. In addition to the potential claim against an official who violates the statute, a township could arguably be subjected to liability itself.

N. Prompt Payment Act

Payments to the vendors and contractors are governed by the terms of the contract and the Local Government Prompt Payment Act, 50 ILCS 505/1, *et seq*. In general, the Prompt Payment Act requires that the public entity take action on an invoice within thirty (30) days of it being presented unless investigation is required. The Act allows for additional time if testing or professionally evaluating the fitness of the material, labor or services provided is necessary. Here again, careful drafting of the contracts will require the input of the design professional and possibly the CM before the payment application triggers the 30-day period of the Act. The Act also imposes an interest penalty (2%) on the township for failure to make timely payment.

XIV. COTERMINOUS TOWNSHIPS: ANNEXATION AND MERGER

Where a territory within any city in the county has a population of not less than 3,000, the county board may provide that the territory shall be organized as a township. The county board may also provide that the territory of any city having a population of not less than 15,000, and composed of portions of two or more townships, may be organized into a new township under the name designated in a petition. Such a city would be known as a coterminous city, 60 ILCS 1/15-5, and the township would be known as a coterminous township.

A. Annexation

1. County Board

Whenever territory not more than one half square mile in extent and containing not more than 50 inhabitants is disconnected from a city, the county board may disconnect that territory from the township and annex it to an adjacent township or townships. 60 ILCS 1/15-10.

2. Court Order

Whenever by court order or ordinance any of the territory of the city is disconnected from the city, the territory shall automatically be disconnected from the otherwise coterminous township and connected to the adjacent township. The transfer of the territory shall not affect the city's status as a city with a coterminous township. If disconnection is pursuant to court order, the petitioning party in the cause shall, within 30 days of entry of an order permitting disconnection, serve a copy of the order upon the coterminous township, the adjacent township, and the county clerk by certified mail, return receipt requested, and shall file proof of the service with the circuit clerk. 60 ILCS 1/15-10.

Upon objection by either the coterminous township or the adjacent township within 180 days after the enactment of the ordinance or after service of the court order, the county board may pass an ordinance annulling the automatic disconnection of territory from the coterminous township. The action by the county board shall not affect the disconnection of territory from the city but shall cause the territory to remain in the coterminous township. Again, the annulling by the county board of the automatic disconnection of territory from the coterminous township shall not affect the city's status as a city with a coterminous township. 60 ILCS 1/15-10.

3. Referendum

Whenever a city coterminous with a township has voted to annex any territory in an adjacent township, the city clerk shall, by registered or certified mail, file a certified copy of the annexation ordinance with the clerk of the township in which the proposed disconnection is to take place. If, within 45 days after the date of mailing notification, the township board of the township from which the territory is to be disconnected determines that the disconnection would not be in the best interests of that township, the township board may request that a referendum approving or disapproving the disconnection be held in that township. This 45-day period has been construed as the period within which an adjacent township must protest a city's annexation to prevent an automatic transfer of the territory to the coterminous township. Town of City of Bloomington v. Bloomington Twp., 233 Ill. App. 3d 724 (4th Dist. 1992). The city, its coterminous township, and the adjacent township may, however, agree by intergovernmental agreement and without the necessity of a referendum that the territory shall remain part of the adjacent township and shall not become part of the township that is coterminous with the municipality.

The township clerk of the adjacent township shall, within 30 days after the vote of the township board of the adjacent township, certify the proposition to disconnect the territory from the adjacent township to the proper election officials and the city clerk of the annexing city. The election officials are to submit the proposition to the voters of the township requesting the referendum at an election in accordance with the general election law. The proportionate cost of the election shall be borne by the township requesting the election. The form of the proposition is set out by statute.

Should the disconnection be approved, then upon connection to the new coterminous township any debts and liabilities of the territory are to be taken over by that coterminous township. However, if the proposition fails, the territory shall remain with the adjacent township. The board of the other township, though, may request that another referendum approving or disapproving that same disconnection be held in the other township. 60 ILCS 1/15-15.

4. Failure of Proposition to Disconnect – Status Quo

Where the proposition to disconnect the territory fails, the status quo is maintained. Where the proposition to disconnect fails or the city, its

coterminous township, and the adjacent township agree by intergovernmental cooperation agreement that the territory shall remain part of the adjacent township, the city may annex the territory and keep its status as a city with a coterminous township. 60 ILCS 1/15-20; *see also,* Nameoki Twp. v. Granite City Twp. 242 Ill.App.3d 141, 610 N.E.2d 111 (5th Dist. 1993).

5. Total Equalized Assessed Value of Annexed Parcel – Less Than 1%

When any parcel of territory lying in an adjacent township is annexed by the city and the parcel constitutes less than 1% of the total equalized assessed value of the adjacent township, each separate parcel shall become disconnected from that township and included in the coterminous township without having the proposition to disconnect submitted to the voters in the adjacent township. This is the case until all parcels annexed during each annual period constitute 1% or more of the total equalized assessed value of the adjacent township. 60 ILCS 1/15-25. According to Town of City of Bloomington v. Bloomington Twp., 233 Ill. App. 3d 724 (4th Dist. 1992), after the 1% threshold is met, the notice, protest, and referendum provisions of the statute then apply to the annexation that put the annexed property over 1% as well as to any subsequent annexations within the same 12-month period.

6. Payment for Property Taxes

For territory disconnected from a township and connected to a coterminous township before August 10, 2005, the coterminous city shall provide to the township from which the territory was disconnected an amount equal to the real estate tax that was collected on the property in the tax year immediately preceding the disconnection. This should be done on or before December 31 each year for a period of 10 years. 60 ILCS 1/15-30; Town of Benton v. City of Zion, 195 Ill. App. 3d 71 (2d Dist. 1990).

For territory that is disconnected from a township and connected to a coterminous township after August 10, 2005, the coterminous city shall provide to the township from which the territory was disconnected, for a period of 10 years: (i) no later than 60 days after the first due date for real estate taxes in that county for that tax year, an amount equal to at least 50% of the real estate tax that was collected on the property in the tax year immediately preceding the disconnection, and (ii) on or before December 31 of each year an amount equal to 50% of the real estate tax that was

collected on the property in the tax year immediately preceding the disconnection. 60 ILCS 1/15-30.

Note: A township officer of a township from which a territory is disconnected shall continue as an officer of the township until the expiration of the term for which he or she was elected or appointed and until a successor is elected or appointed and qualified, without regard to whether the township officer resides in the township or the territory disconnected from the township. 60 ILCS 1/15-17.

7. Automatic Annexation – Exception – Reconnection

Automatic annexation may occur if several conditions are met. First, the unincorporated territory must be in a township, and this township must be adjacent to another township. This second township must be coterminous with a city that is wholly bounded by the coterminous township or is bounded solely by the coterminous township and a river or lake, a property owned by the State of Illinois (except highway right-of-way owned in fee by the State), a forest preserve district, or the Illinois State boundary. If these conditions are met, that territory shall automatically become annexed to the city, disconnected from the adjacent township, and included in the coterminous township. This automatic annexation may be done without having the proposition to disconnect submitted to the voters in the adjacent township. However, when the unincorporated territory is, and as long as it remains, predominantly agricultural in nature, the automatic annexation shall not occur. 60 ILCS 1/15-35.

8. Powers of City Council

All the powers vested in the township described in Section 15-45 shall be exercised by the city council. The city council shall perform the duties of a township or multi-township board in relation to the township or multi-township assessor as provided in the Property Tax Code. By resolution passed by a three-fourths vote, the city council of any home rule municipality may cease to exercise the powers of the township board. Vacancies within the offices of township clerk, township collector, and board of trustees resulting from the city council's action shall be filled in accordance with the general election law for the holding of township elections. Any action taken under this Section shall not alter the rights and duties of the township supervisor as chief executive officer of the township or any other duly elected township officials. 60 ILCS 1/15-50.

9. Consolidation and Discontinuance of Offices

The city council may by ordinance provide that the offices of city and township clerk are united in the same person, that the offices of city treasurer and township collector are united in the same person, and that the office and election of highway commissioners shall be discontinued. In any combination of offices, the combined office is to be filled in the manner provided by law for filling the office of city clerk or city treasurer, as the case may be. The township supervisor shall be ex officio supervisor of general assistance. 60 ILCS 1/15-55.

10. Vacancies

Vacancies in any township office within a city and township described in Section 15-45 of the Township Code may be filled by the city council as provided in Section 60-5 of the Township Code. 60 ILCS 1/60-5.

11. Townships in Counties of 500,000 or More Excepted

The provisions regarding disconnection have no application to the office of township assessor in townships that are situated in counties of 500,000 or more. 60 ILCS 1/15-65.

B. Special Districts Merger into Townships

Any special district may merge into and transfer all of its rights, powers, duties, liabilities, and functions to the township. By resolution or ordinance, the special district may petition the township for merger. Within 30 days after the adoption of such resolution or ordinance, the special district shall file a copy of the petition with the township clerk of the township and with the county clerk. Within 60 days of the filing of the petition with the township clerk, the board of township trustees shall by ordinance either agree or refuse to agree to the merger. Failure of the board of township trustees to adopt such an ordinance within the 60 days shall constitute a refusal to agree to the merger.

After an ordinance is passed by the board of township trustees, it is to be published once within 30 days after its passage in one or more newspapers published in the township. If no newspaper is published there, the ordinance shall be published in a newspaper published in the county in which the township is located and having general circulation within that township. If no newspaper is published in the county having general circulation in the township, publication may be made instead by posting

copies of the ordinance in 10 public places within the township. The publication or posting of the ordinance shall include a notice of the specific number of voters required to sign a petition requesting that the question of the merger be submitted to the voters of the township, the time within which the petition must be filed, and the date of the prospective referendum. The township clerk shall provide a petition form to any individual requesting one. The ordinance shall not become effective until 30 days after its publication or the date of such posting of such copies.

The board of township trustees shall certify the question to the proper election officials, who shall submit the question at an election in accordance with the general election law. This certification may take place when the petition is filed with the board of township trustees. The petition must be signed by the electors of the township equal in number to 10% or more of the registered voters in that township. The form of the proposition to be placed on the ballot is set out by the statute.

If the boundaries of the township and special district are coterminous, the special district shall merge into the township only if a majority of the voters voting on the question shall favor merger. If the boundaries of the township and special district are not coterminous, then a majority of the voters voting upon the question in the special district and a majority of the voters voting in that portion of the township that is not included within the special district must both favor the merger. If a majority of the voters residing in the special district *or* a majority of the voters voting in that portion of the townships that is not included within the special district do not favor the merger, the special district shall not merge into the township.

The effective date of the merger shall be the first day of January of the year immediately following the effective date of the ordinance or the approval by the referendum. However, if the board of township trustees refuses to agree to the merger or if a majority of the voters voting on the question shall not favor merger, then the special district shall not file a petition for merger with the township clerk within three years after the refusal to agree or referendum. Upon the effective date of the merger, the township shall assume and succeed to all of the rights, powers, duties, liabilities, and functions of the special district, including the assumption of any indebtedness of the special district.

The special district is dissolved and ceases to exist as a separate and distinct political subdivision. The township is controlled by the laws affecting a special district, including the right to levy taxes as allowed to a special district. The right to levy taxes, however, exists only within the

area formerly comprising the merged special district. Upon the effective date of the merger, all books, records, equipment, property, and personnel held by, in the custody of, or employed by the special district shall be transferred to the township. The transfer does not affect the status or employment benefits of transferred personnel. 5 ILCS 220/3.6.

XV. THE TOWNSHIP OPEN SPACE ACT

Townships may, after a referendum is passed in favor of the township establishing an open space program, acquire and hold land in a natural state and provide for funding for land acquisition, bonds, etc. 60 ILCS 1/115-5, *et seq.* "Open Space" is defined in the statute as:

> any space or area of land or water of an area of 50 acres or more, the preservation or the restriction of development or use of which would (i) maintain or enhance the conservation of natural or scenic resources; (ii) protect natural streams or water supply; (iii) promote conservation of soils, wet lands, or shores; (iv) afford or enhance public outdoor recreation opportunities; (v) preserve flora and fauna, geological features, historic sites, or other areas of educational or scientific interest; (vi) enhance the value to the public of abutting or neighboring highways, parks or other public lands; (vii) implement the plan of development adopted by the planning commission of any municipality or county; or (viii) promote orderly urban or suburban development.

The language has been interpreted to include a portion of a parcel that is 50 acres or more, rather than a 50-acre parcel by itself. Town of Libertyville v. Blecka, 180 Ill. App. 3d 677, 536 N.E.2d 1271 (2d Dist. 1989). Further, a parcel less than 50 acres may not be acquired unless it is a portion of a tract of 50 acres or more being successfully contemporaneously condemned by the township. Town of Libertyville v. Nw. Nat'l Bank of Chi., 188 Ill. App. 3d 809, 544 N.E.2d 1151 (2d Dist. 1989). A tract under 50 acres may also be acquired if it abuts or adjoins a tract having an area of 50 acres or more already owned by the township as part of its open-space program.

A. Petition

Preparation of an open space plan starts with the filing of a petition with the township clerk. This petition must have been signed by no less than 5% or 50 (whichever is the larger number) of the registered voters of the township. The petition itself must recommend that the township board begin the preparation of an open space plan. Within 5 business days after the filing of the petition, the township clerk must provide public notice of the existence of the filed petition in the same manner as notices of

meetings of the township board are provided. A hearing must be conducted no less than 30 days after the filing of the petition to determine the validity of the petition, which may be challenged in accordance with the general election law. A proposed open space plan has six parts:

1. Identify all open land to be acquired;
2. State how purchasing this land will further open space purposes;
3. State the costs of the plan;
4. State the approximate tax to be levied to pay for the plan;
5. State how long the plan will take to complete;
6. Establish standards and procedures for making priorities for the acquisition of the parcels identified in the plan.

60 ILCS 1/115-10.

B. Public Hearing

Before an open space plan is adopted or amended, the township must hold a public hearing. The township clerk must publish the notice in a newspaper published in the township. This notice must be published not less than 15 days nor more than 30 days before the date of the hearing. The notice of the hearing must also be sent by registered or certified mail, return receipt requested, not less than 20 days before the hearing, to the owners of the property being recommended for acquisition and designation as open space or open land under the proposed open space plan. A copy of the plan shall also be filed with the township clerk.

At the public hearing, the public may comment on the plan orally, in writing, or both. Within 60 days of this hearing, the township board must recommend or reject the plan in writing. Unless the board does so or the voters of the township do not file with the township clerk a petition approving the project within 60 days after the public hearing, then the plan may not be adopted until another hearing is held. In any case, a recommendation to adopt an open space plan is to be made no later than 138 days before the next regular election for the question to appear on the ballot. Otherwise, it may not be adopted unless another public meeting is held and notice given as described above. 60 ILCS 1/115-15.

C. Referendum

If the township board recommends an open space plan or if a subsequent petition is filed by not less than 5% or 50, whichever is greater, of the registered voters of the township (according to the voting registration records at the time the petition is filed) recommending adoption of the open space plan, then within 30 days of making of the recommendation or the approval of the petition, the township board is to file a petition with the township clerk. This petition will request the clerk to submit the question of an open space plan to the voters. Approval of such a petition shall be given if the petition is determined to be valid following public notice and a hearing consistent with the requirements of 60 ILCS 1/115-10 for the initial petition. The form of the question is prescribed by statute. 60 ILCS 1/115-20.

D. Amendments to Plan

If the township board recommends amendments to the plan, then no property subject to the amendment may be acquired until the revised plan is approved. Approval is made by the voters at a referendum. However, if the amendments do not ask for expenditures beyond those provided in the original plan and the amendments do not provide for the acquisition of property from people who are involuntarily selling their property, then no referendum is necessary. 60 ILCS 1/115-25.

E. Property Associated With Municipality

With the cooperation of the municipality, condemnation proceedings may be used in order to acquire property existing within the corporate boundaries of a municipality. However, this power is deemed waived should the municipal authorities not act within 30 days of the recommendation of the township board. If exercised, the power causes a question to be voted on at referendum by township voters as to whether the township board will have the authority to acquire land by condemnation, the language of the question being prescribed by statute. 60 ILCS 1/115-30. These powers also apply to properties that are contiguous to a municipality. 60 ILCS 1/115-35. Under these provisions, should the acquisition of any property fail at referendum, the parcel can again be considered for approval at an election if not less than 23 months have elapsed since the election at which the acquisition was rejected. 60 ILCS 1/115-40.

F. Township Board Powers Related to Open Space Plan

Once a plan is adopted, the township board is empowered to study the open space needs of the township. To meet these needs, the township board may prepare and adopt a coordinated plan of areas and facilities. 60 ILCS 1/115-50. Miscellaneous powers also apply ranging from the acceptance of money for open space purposes to the hiring of an executive officer for the carrying out of the open space plan. 60 ILCS 1/115-5 *et al.*

The township board may also acquire and transfer property. 60 ILCS 1/115-55. Under these provisions, should the township acquire enough open space so as to constitute 30% of the total acreage of the township, then no more additional open space land may be acquired by condemnation. Condemnation is also ruled out in regard to land designated in the plan but not designated in an action for condemnation within three years of the plan's approval by referendum. Condemnation is also limited in that it cannot be used to acquire farmland.

G. Borrowing of Money; Bonds

Following a referendum, the board may borrow money and issue bonds for lands that are part of the open space plan. 60 ILCS 1/115-105. These amounts may not exceed 5% on the valuation of taxable property in the township. The board may either issue bonds on its own initiative or upon the submission of a petition from the voters. The question of the referendum is prescribed by statute. 60 ILCS 1/115-105.

H. Surplus Funds

A township that has adopted an open space plan may maintain and receive from year to year funds for maintenance and operation of the township's open spaces in surplus of the amount necessary for the annual maintenance and operation of open spaces within the township. The surplus shall be maintained in a separate fund and not commingled with the township's general fund. The surplus shall not be derived from any township tax levy. 60 ILCS 1/115-66.

I. Report

No later than March 31 of each calendar year, the township board of any township that has established an open space program shall file with the township clerk a report describing the actions taken by the board in the preceding calendar year to implement the open space plan. The following information shall be included: (1) the amount of taxes levied and received

by the township; (2) the amount spent in implementing the plan; (3) the legal and common descriptions of all land acquired; and (4) the purpose for which all properties acquired are being used. 60 ILCS 1/115-110.

XVI. TOWNSHIP LIBRARIES

A. Establishment

Upon the adoption of an ordinance by the governing body of an incorporated town, village, or township or when 100 legal voters of any incorporated town, village, or township present a petition to the clerk thereof asking for the establishment and maintenance of a free public library in such incorporated town, village, or township, the clerk shall certify the question of whether to establish and maintain a free public library to the proper election authorities, who shall submit the question at a regular election in the township. 75 ILCS 5/2-2.

B. Library Board of Directors

A township library is governed by a board of library directors. 75 ILCS 5/4-3.

1. Term of Office

Library directors shall serve for four years and until their successors are elected and qualified. 75 ILCS 5/4-3.2.

2. Election

Nominations for the position of library director, including the first board of library directors, shall be by petition, signed by at least 50 legal voters residing in the incorporated town or village (except a village under the commission form of government) or township, or township coterminous with a municipality and filed with the clerk of such incorporated town, village, or township. The clerk shall certify the candidates for library directors to the proper election authorities. All candidates must be residents of the township. The ballots shall not designate any political party, platform, or political principle. 75 ILCS 5/4-3.3.

3. Compensation

Library directors are not permitted to receive any compensation. 75 ILCS 5/4-5.

4. Organization – Meetings

Immediately after their election or appointment, the library directors shall meet and organize, beginning first with the election of one of their number as president and secretary and by the election of such other officers as they may deem necessary. They shall further provide in the bylaws of the board as to the length of their term in office. The directors shall determine the time and place of all official meetings of the board at which any legal action may be taken and shall post notice of this information at the public library maintained by the board and at not less than one public place within the corporate confines of the area of library service one day in advance. 75 ILCS 5/4-6.

5. Vacancies

If a vacancy occurs in the board of directors in any township, the vacancy may be filled by the remaining directors until the next regular library election at which library directors are scheduled to be elected. If there is a failure to appoint a library director or a failure to elect a library director or if the person elected or appointed fails to qualify for office, the director may continue in office if available and qualified until a successor has been elected or appointed and qualified.

The board of directors may declare a vacancy where any person serving as a director is no longer a resident of the township or where any director fails or neglects to serve as a board member. Absence without cause from all regular board meetings for a period of one year shall be a basis for declaring a vacancy. 75 ILCS 5/4-4.

C. Annual Report

Within 60 days after the expiration of each fiscal year of the township, the board of library directors shall make a report of the condition of their trust on the last day of the fiscal year to the board of township trustees. This report shall be made in writing and shall be verified under oath by the secretary or some other responsible officer of the board of directors. It shall contain (1) an itemized statement of the various sums of money received from the library fund and from other sources; (2) an itemized statement of the objects and purposes for which those sums of money have been expended; (3) a statement of the number of books and periodicals available for use, and the number and character thereof circulated; (4) a statement of the real and personal property acquired by devise, bequest, purchase, gift, or otherwise; (5) a statement of the character of any extensions of library service that have been

undertaken; (6) (blank); (7) a statement as to the amount of accumulations and the reasons therefore; (8) a statement as to any outstanding liabilities including those for bonds still outstanding or amounts due for judgments, settlements, liability insurance, or for amounts due under a certificate of the board; (9) any other statistics, information, and suggestions that may be of interest. A report shall also be filed at the same time with the Illinois State Library. The board of directors in a township shall also submit its appropriation and levy determinations to the Board of Township Trustees as provided in "The Illinois Municipal Budget Law."

The board of trustees of a municipal library shall also submit to the township board, along with the Illinois State Library, a statement of financial requirements of the library for the ensuing fiscal year for inclusion in the appropriation of the corporate authority, and of the amount of money which, in the judgment of the board of library trustees, will be necessary to levy for library purposes in the next annual tax levy ordinance. This statement shall be submitted no less than 60 days prior to when the tax levy must be certified under subsection (b) of Section 18-15 [35 ILCS 200/18-15] of the Property Tax Code. 75 ILCS 5/4-10.

D. Taxation

When the electors of an incorporated township, village, or township have voted to establish and maintain a public library, the corporate authorities of the incorporated township, village, or township shall levy an annual tax for the establishment and maintenance of such library, not exceeding .15% of the value as equalized or assessed by the Department of Revenue. The corporate authorities may also levy an additional tax of .02% of the value of all the taxable property in the incorporated town, village, or township, as equalized or assessed by the Department of Revenue, for the purchase of sites and buildings, for the construction and equipment of buildings, for the rental of buildings required for library purposes, and for maintenance, repairs, and alterations of library buildings and equipment. In any year in which the corporate authorities propose to levy such additional .02% tax, the corporate authorities shall adopt a resolution determining to levy such tax.

Within 15 days after the adoption of the resolution, it shall be published at least once in one or more newspapers published in the incorporated town, village, or township, or if no newspaper is published, then in one or more newspapers with a general circulation in the township. In an incorporated town, village, or township in which no newspaper is published, publication may instead be made by posting a notice in three

prominent places. The publication or posting of the resolution shall include a notice of (1) the specific number of voters required to sign a petition requesting that the question of the adoption of the resolution be submitted to the electors of the incorporated town, village, or township; (2) the time in which the petition must be filed; and (3) the date of the prospective referendum.

The clerk of the township shall provide a petition form to any individual requesting one. If no petition is filed with the corporate authorities within 30 days after publication or posting of the resolution, the township shall then be authorized to levy the tax. However, if within the 30-day period a petition is filed with the corporate authorities, signed by the electors of the township equal in number to 10% or more of the total number of registered voters in the township, asking that the question of levying such a .02% tax be submitted to the electors, then the question shall be submitted at a special or general election. Again, the form of the proposition is set out by statute. 75 ILCS 5/3-4.

E. Appropriation Ordinance

Appropriations for library purposes within the annual appropriation ordinance of the corporate authority shall terminate with the close of the fiscal year of the library. However, any remaining balances shall be available for 90 days thereafter for the authorization of the payment and the payment of obligations incurred before the close of the fiscal year or within the 90-day period thereafter. All balances remaining after such 90-day period shall be available for transfer to be accumulated. 75 ILCS 5/4-15.

F. Personal Property Replacement Tax – Payment After Disconnection

Any township that receives an allocation based on personal property taxes levied and previously paid to a public library shall immediately pay to that library a proportionate share of the personal property tax replacement funds that that township receives. If the public library has converted to a library organized under the Illinois Public Library District Act, such proportionate share shall be immediately paid over to the library district that maintains and operates the library. 30 ILCS 115/12.

XVII. TOWNSHIP COMMUNITY BUILDINGS

A. Creation

Any township having a population of not more than 25,000 may issue bonds for community buildings to purchase, erect, equip, remodel, or renovate community buildings. 60 ILCS 1/150-5. The statutory language about how to start this process is internally conflicting and confusing. Section 10 of the statute indicates that the board of managers must pass a resolution to put the question of a bond issuance on the ballot. 60 ILCS 1/150-10. However, section 15 of the statute specifies that the first board of managers will be elected "at the regular election at which the referendum for the first issue of bonds" is authorized by the voters. 60 ILCS 1/150-15. If the board of managers does not exist until the bond question is on the ballot and the bond question can only be put on the ballot by the board of managers, how the procedure works is unclear. Townships should consult with their bond counsel prior to placing any referendum under these laws on the ballot. In any event, a township may, by ordinance or resolution, purchase, erect, equip, remodel, or renovate a community building without referendum approval, if the purchasing, erecting, equipping, remodeling, or renovating of the community building is paid or provided for with funds that are not the proceeds of bonds under this Article. 60 ILCS 1/150-10.

B. Election of Board of Managers

The community building shall be cared for and supervised by a board of managers. The board of managers shall consist of three persons who are registered to vote in the township. Ten registered voters of the township must file a petition nominating candidates for the board of managers with the township clerk. The township clerk shall certify the names of the candidates to the proper election authorities. The three candidates receiving the highest number of votes shall assume the duties of their office on the first Monday of the month following their election. Three managers shall be elected at the time of the regular township election and until their successors are elected and qualified. Each member of the board of managers may be paid a salary not to exceed $25 per day or $500 per year, as determined by the township board, for attendance at township meetings and business travel pertaining to official duties.

Within 10 days after assuming office, the board of managers shall meet and organize. One member shall be elected Chairman, and one member shall be elected clerk of the board. A majority of the board shall

constitute a quorum for the transaction of business. If a vacancy occurs on the board, the vacancy shall be filled by the remaining managers within 60 days by the appointment of a person who is qualified to be a manager. The person appointed shall serve the remainder of the unexpired term. 60 ILCS 1/150-15.

The board of managers shall make a full and complete annual report of all its actions to the township board.

C. Bonds

The board of managers shall initiate proceedings for the issuance of bonds by adopting a resolution proposing the issuance of bonds and describing briefly the authority under which the bonds are to be issued, the nature of the project to be financed, the estimated total cost of the project, and the maximum amount of bonds authorized to be issued. The resolution shall direct that the proposition to issue the bonds be submitted to the electors of the township. The township clerk shall certify the proposition to the proper election officials, who shall submit the proposition at an election. The proposition's form is set out in statute. 60 ILCS 1/150-10.

The proceeds of the sale of bonds shall be expended by the board of managers for the purpose of purchasing or erecting and equipping, or remodeling or renovating a community building or buildings, or acquiring a site for a community building or buildings. The board of managers may exercise any other powers necessarily incidental in order to carry out these provisions. The supervisor of the township shall be treasurer of the funds and shall pay out those funds only on the written order of a majority of the board of managers. 60 ILCS 1/150-30.

D. Use of Community Building

Subject to the reasonable rules and regulations of the board of managers, the community buildings shall be for the free use and benefit of the inhabitants of the township for lectures, concerts, free amusements and entertainments, and all other general educational purposes. The annual township meetings and other public assemblies may be held in the building. The board of managers may temporarily lease the community building when not in use for public purposes for any reasonable and legitimate private use on terms deemed reasonable and proper. Private lessees of a community building may charge admission fees. All money

received from temporary rentals shall be turned over to the treasurer and shall be used only for community building purposes. 60 ILCS 1/150-60.

Pursuant to the Smoke Free Illinois Act, effective in 2008, smoking is prohibited in all public places and places of employment, which includes all township buildings as well as community buildings. This prohibition also provides that there be no smoking within a minimum distance of 15 feet from entrances and exits of township buildings. Additionally, this Act prohibits smoking in all government vehicles, including those vehicles owned, leased, or operated by the township. 410 ILCS 82/15.

E. Dedication as Memorials to Soldiers and Sailors

The community buildings of a township may be dedicated to the soldiers and sailors of the township, and bronze tablets or other memorials in honor of those soldiers and sailors may be placed in the building by the board of managers. 60 ILCS 1/150-55.

F. Sale of Community Building or Site at Auction

In the event that a community wants to sell a community building or a site with a community building on it, 50 electors of the township may file a petition filed with the clerk of the board of managers requesting the sale at public auction. The petition shall state the township fund to which the proceeds of the sale shall be transferred. Upon the filing of a petition, the board of managers shall certify that proposition to the proper election officials, who shall submit the proposition at an election to decide whether the community building or site with the community building on it shall be sold. The form of the proposition is set out at 60 ILCS 1/150-75.

If a majority of all the votes cast on the proposition is in favor of the sale, the board of managers shall within 60 days sell the property at public sale after first giving notice of the time, place, and terms of the sale by publication once each week for three consecutive weeks before the date of the sale. The notice must be given in a newspaper published in the township or, if no newspaper is published in the township, then in a newspaper published in the county and having a general circulation in the township. The statutes provide a sample form for this notice.

Following the sale of the property, the board of managers shall immediately settle all outstanding obligations against the community building and pay over any monies pertaining to the building remaining in

their hands to the proper authorities in accordance with the petition and election. If the building disposed of was the only community building under their care and supervision, no new member of the board of managers shall be elected, nor shall any community building maintenance tax be levied and collected in the township. 60 ILCS 1/150-75.

G. Sale to School District or Municipality

In the event the community wants to sell the property to a school district or municipality, 50 electors of the township may present to the clerk of the board of managers a petition requesting the sale of a community building. The petition shall set forth the school district or municipality to which the proposed sale shall be made, the sale price, and the township fund to which the proceeds of the sale shall be transferred. If the sale price of the property stated in the petition is equal to or greater than the fair market value of the property as determined by the most recent township assessment, the board of managers shall certify that proposition to the proper election officials, who shall submit the proposition at an election to decide whether the property shall be sold. If the stated price of the building or site is less than the fair market value of the property as determined by the most recent township assessment, the board of managers shall approve the submission of the proposition to the proper election officials before the electors of the township may vote on the sale of the property. The form of the proposition is set out by statute.

If a majority of the voters voting on the proposition is in favor of the sale, the board of managers, upon receipt of the purchase price, shall convey the property to the school district or municipality. Upon the completion of the sale, the board of managers shall immediately settle all outstanding obligations against the community building and pay any remaining money pertaining to the building to the proper authorities. If the building so disposed of was the only community building under their care and management, no new member of the board of managers shall be elected, nor shall any community building maintenance tax be levied and collected in the township. 60 ILCS 1/150-80.

XVIII. TOWNSHIP PARKS

A. Land for Township Parks

A township board may acquire lands (not exceeding for any one park twenty-five acres in extent, unless received as a gift) to be set apart and forever held and maintained and improved as public parks for the free use of the public. 60 ILCS 1/120-5.

B. Eminent Domain

A township desiring to procure lands for park purposes may purchase the lands from the owner or owners or, in the discretion of the township board, may acquire those lands by the exercise of the power of eminent domain in the manner provided by Illinois law for taking or damaging private property for public purposes. However, a township may not use eminent domain powers with respect to lands located within the boundaries of a municipality that is served by a municipal recreation department or park district. 60 ILCS 1/120-10. However, notwithstanding any other power granted in the Township Code, any township exercise of condemnation authority or power of eminent domain must be consistent with the Eminent Domain Act. 60 ILCS 1/85-12.

C. Park or Golf Course Land Purchase

A township in a county having a population between 300,000 and 1,000,000 may, by purchase only and not by condemnation, acquire lands not exceeding 50 acres for park purposes or golf courses. A township in a county having a population between 100,000 and 300,000 may by purchase only and not by condemnation acquire lands not exceeding 100 acres for park purposes or golf courses. If the lands are developed as a golf course, the township board shall charge a fee of those using the golf course and its facilities. The fee shall be at a rate sufficient to pay for the maintenance, depreciation, and operating costs relating to the golf course. 60 ILCS 1/120-15.

D. Annual Maintenance Tax and Use of Proceeds

A township may levy a tax to provide a fund for the maintenance of parks, not exceeding 0.02% (or the rate limit in effect on July 1, 1967, whichever is greater) of the value of the property in the township in any one year as equalized or assessed by the Department of Revenue. The tax shall be levied and collected at the time and in the manner that other township taxes are required to be levied and collected. These limitations

upon tax rates may be increased or decreased under the referendum provisions of the General Revenue Law of Illinois. For further information on tax levies, please see Chapter IX on Township Finance.

The maintenance tax, when levied and collected, shall be kept separate and distinct from all other township funds and shall be applied exclusively to the expense of maintenance and upkeep, adornment, and development of parks acquired by the township or to the acquisition of other lands to be used for public park purposes. In any township in a county having a population between 100,000 and 1,000,000, the monies provided by the taxes authorized by these provisions may be used for the acquisition and development of lands for park and golf course purposes, subject to the requirements concerning the establishment of fees for the use of golf courses. 60 ILCS 1/120-20.

E. Township Park Bond Proceeds

A township board may decide to issue park bonds for the purpose of promoting the health and welfare of its citizens or for the purpose of procuring and improving lands to be set apart and forever held as one or more public parks for the free use of the public. Such process may be initiated so long as no park exceeds 25 acres. 60 ILCS 1/125-5.

Before such bonds can be issued, 50 or 5% of the legal registered voters of the township, whichever is greater, may file a petition in writing to the circuit clerk in the county in which the township is located, with a copy of the petition filed on the same day with the township clerk, asking that a referendum be held to authorize the issuance of bonds for the purpose of providing funds for the purchase and improvement of one or more public parks in the township. The petition must designate the amount of bonds proposed to be issued for the acquirement and improvement of the parks. Within 5 business days after filing the petition, the township clerk shall provide public notice of the existence of the filed petition in the same manner as notices of meetings of the township board are provided.

A hearing is then conducted no less than 30 days after the filing of the petition. During the hearing, the validity of the petition may be challenged in accordance with the general election law. The circuit court, if it determines that the petition conforms with the requirements of the law, shall certify the question to the proper election officials who shall submit the question at an election to the legally qualified voters of the township. The court shall designate the election at which the question

shall be submitted, and the notice of the referendum shall state the amount of bonds proposed to be issued and identify any specific park acquisition or improvement projects intended to be supported by the bond proceeds; the notice shall be given and the referendum conducted in accordance with the general election law. The form of the proposition is set out by statute. 60 ILCS 1/125-10.

If the majority of referendum votes cast are in favor of the issuance of such bonds, the township board must hold at least one public hearing on the subject of how the bond proceeds may be spent before the bonds may be sold. No less than 15 days in advance of the hearing, public notice must be provided in the same manner as meetings of the township board are noticed, but the notice shall also be provided to all municipalities and park districts located within the township. During the hearing, all interested residents and local government officials within the township must have an opportunity to be heard. Determination of how the bond proceeds will be used will be done according to which proposition form is used for the referendum. 60 ILCS 1/125-12.

The township supervisor and clerk, at or before the time of the delivery of the bonds for value, must file with the county clerk of the county in which the township is situated their certificate in writing, stating the amount of bonds to be issued, their denomination, the rate of interest, and where payable. The supervisor and clerk will then levy a direct annual tax upon all the taxable property in the township sufficient to pay the principal and interest of the bonds. The certificate filed with the county clerk provides sufficient authority to the county clerk to extend the tax named in the certificate upon all the taxable property in the township. 60 ILCS 1/125-15.

While the direction of use of the park bond proceeds was at one time controlled by the highway commissioner, in 2008 this power was shifted to the township board of trustees. However, a majority of the members of the township board may designate the bond proceeds to be expended under the direction and upon the warrant of the highway commissioner, if the highway commissioner provides written consent to that action. If at the time the proceeds are received a board of park commissioners is invested by law with control over any park wholly or in part in the township, the proceeds of the bonds shall be expended upon the warrants of a majority of the board of park commissioners. 60 ILCS 1/125-20.

XIX. TOWNSHIP CEMETERIES

A. Public Graveyards Act

1. Control of Graveyards

Most townships operate under the Public Graveyards Act. Pursuant to this Act, public graveyards in Illinois not under the control of any corporation sole, organization, or society and located within the limits of townships or counties not under township organization, may be controlled or vacated by the township's corporate authorities in such manner as such authorities may deem proper. For these townships, such control may be vested in three trustees. If a township board has vested control of a public graveyard in 3 trustees, it may, by resolution, divest the trustees of control of the public graveyard and assume control of the public graveyard. In a township coterminous with a municipality, cemetery trustees are appointed by the governing authority of the municipality, with one trustee appointed in each odd-numbered year for a term of 6 years. In the event of a vacancy, a replacement trustee is appointed by the township board for a 6-year term. The township board may authorize that such cemetery trustees be paid compensation not to exceed $1,000 per year, which was doubled from a previous maximum of $500 per year. No more than one of the trustees can be from any one city or village or incorporated township or section of land within such township unless such city, village, incorporated township, or section of land has more than 50% of the population of the township according to the most recent federal census. 50 ILCS 610/1. The township supervisor is the treasurer of cemetery funds.

2. Tax to Control and Maintain Cemeteries in Townships with Less Than 100,000 Inhabitants

Upon petition of 50 legal voters to the township clerk of any township having a population not exceeding 100,000 asking that an annual tax be levied for the control and maintenance of and the purchase of land and construction of necessary buildings for the cemeteries of the township, and the maintenance of and the purchase of land and construction of necessary buildings for public cemeteries not operated for profit in the township, the township clerk will certify the proposition to the proper election officials who will submit the proposition to the voters at an election in accordance with the general election law. If a majority of all the votes cast upon the proposition are in support of a levy of such tax, the cemetery trustees of such township will thereafter annually levy a tax of not to exceed .20% of value, as equalized or assessed by the Department of Revenue. However, townships that levied this tax at a rate

less than .20% in 1989 may provide for the electors to vote to increase the rate for such purposes not to exceed .20% in the manner provided for establishing the tax in the first instance. The foregoing limitations upon tax rates may be increased or decreased under the referendum provisions of the General Revenue Law of Illinois. This tax will be collected in like manner with other general taxes in such township, will be held by the township supervisor for payment at the direction of the cemetery trustees, and is known as "The Township Cemetery Fund." Such tax is in addition to all other taxes that the township levies and collects, but electors present at the Annual Township Meeting may direct the raising of money by taxation for any of the purposes set forth in Section 3.03 of Article IV of "An Act to revise the law in relation to township organization." 50 ILCS 610/1c.

For further information regarding tax levies, please see Chapter IX on Township Finances.

3. Cleaning Neglected Graves and Cemeteries

The above proposition, however, is just one way to maintain a cemetery. The township board of trustees may also appropriate funds to be used for the purpose of putting any old, neglected graves and cemeteries in the township in a cleaner and more respectable condition. The township board may appropriate funds to be used to maintain cemeteries owned by the state or any unit of local government. The township board may also appropriate funds from the township treasury to maintain non-profit cemeteries, but not for religious or sectarian purposes. 50 ILCS 610/2c.

B. Specific Township Cemetery Regulation and Authority

Beyond the Public Graveyards Act, the Township Code provides additional statutory provisions regarding township cemeteries.

1. Permitted Activities

a. Establish and Maintain Cemeteries

A township may establish and maintain cemeteries within and without its territory, may acquire lands for cemeteries by condemnation or otherwise, may lay out lots of convenient size for families, and may sell lots for a family burying ground or to individuals for burial purposes. 60 ILCS 1/130-5. The township's maintenance of the grave, however, does not eclipse the rights of the relatives of the deceased. It has been held in Illinois that relatives of the deceased buried in a public graveyard have an

"easement." Under this easement, the relatives may care for the grave site of the deceased. Smith v. Ladage, 397 Ill. 336 (1947).

b. Enter Abandoned Cemeteries and Make Orderly

A township that has within its territory an abandoned cemetery may enter the cemetery grounds to clean and make them orderly. In no event, however, may a township enter a cemetery for these purposes if the cemetery owner or legally responsible cemetery authority provides written notification to the township demonstrating ownership or control and denying the township authorization to enter. In making a cemetery orderly, the township may correct dangerous conditions in relation to markers and memorials but may not permanently remove them. 60 ILCS 1/130-5.

An abandoned cemetery is defined as an area of land containing more than 6 places of interment for which, after a diligent search, no owner or cemetery authority objects to entry and at which no interments have occurred in at least 3 years and for which there has been inadequate maintenance for at least 6 months. A diligent search, as required prior to entry, includes but is not limited to publication in a newspaper of local circulation at least 30 days prior to entry, noting the intended entry and clean-up, the name and location of the cemetery, the right of an owner or authority to deny such entry, and the date of the proposed clean-up. 60 ILCS 1/130-5.

2. Cemetery Board of Managers

If a township owns or controls a cemetery lying within or without or partly within and partly without the territory of the township, the township collector may appoint a board of three persons to be known as the cemetery board of managers. Members of the board of managers hold their office for a period of two years or until their successors are appointed. The board of managers is responsible for the following:

1. to accept gifts for the cemetery, either real estate or personal, and to hold it in trust for use by the cemetery;
2. to sell lots;
3. to protect the property of the cemetery;
4. to make rules and regulations governing the grounds and driveways of the cemetery; and

5. to construct and maintain a building used for general maintenance.

The board of managers selects one member to be president and another to be clerk of the board. The board also selects a treasurer of the board who may or may not be on the board. Before taking office, the treasurer must execute a bond to the People of the State of Illinois similar to the bond of the treasurer of a village. 60 ILCS 1/130-10.

a. Treasurer of the Board of Managers

The treasurer of the board of managers has custody of all money and property received in trust by the cemetery board of managers. The treasurer pays out that money or property only upon the written order of the board of managers, signed by at least two of the board members. The treasurer keeps permanent records of all trust funds, all receipts and disbursements of trust funds, and the purposes of all receipts and disbursements. Annually, the treasurer under oath makes a written report to the board of managers showing balances, receipts, and disbursements and including a statement showing the amount and principal of trust funds on hand and how they are invested. The report must be audited by the board of managers and, if correct, will be transmitted to the township collector at the same time that the treasurer of a village is required by law to report, to be approved and preserved in the same manner. 60 ILCS 1/130-15.

b. Clerk of Board of Managers

The clerk of the board of managers must keep in a book provided for that purpose a permanent record of the proceedings of the cemetery board of managers, signed by the president and attested by the clerk. The clerk must also keep a permanent record of the several trust funds, from what sources the trust funds were received, the amounts of the trust funds, and for what uses and purposes each trust fund was received. At the time of transmitting the treasurer's report to the township collector, the clerk under oath must annually make a written report to the township collector, stating substantially the same matter required to be reported by the treasurer of the board. The clerk's report, if found to be correct, will be approved and preserved by the township collector. 60 ILCS 1/130-20.

c. Removal of Officers – Accounting

The township collector may remove from office any member of the board of managers or the treasurer of the board of managers for nonperformance of duties or for misappropriation or wrongful use of the funds or property and may require a just and proper accounting for the use of the funds or property. 60 ILCS 1/130-25.

d. Corporate Trustee

Money to maintain the cemetery is sometimes given to the board of managers. In such case, the township may appoint a corporation authorized to do trust business as trustee of the money in place of the treasurer. This corporate trustee has the same powers, authority, and duties as the treasurer of the board of managers, except that it shall not be required to execute a bond and may charge for its services. 60 ILCS 1/130-35.

C. Joint Township Cemeteries

Any two or more townships or road districts may unite in establishing and maintaining cemeteries within and without the corporate limits or territory of either or any of them; they may then acquire lands for those cemeteries in common by purchase, condemnation, or otherwise, may lay out lots of convenient size for families, and may sell lots for family burying grounds or to individuals for burial purposes. 60 ILCS 1/130-30; 60 ILCS 1/135-5.

1. Creation by Referendum

Supervisors or highway commissioners of any townships or road districts desiring to unite to establish and maintain cemeteries may provide by agreement for the joint establishment and maintenance of cemeteries. The agreement must specify the site of the proposed cemeteries and the proportionate share of the cost of acquiring and maintaining the cemeteries that will be borne by each of the townships or road districts. 60 ILCS 1/135-10(a). The township board must certify the proposition to the proper election officials, who will submit the question to the voters at an election in accordance with the general election law. 60 ILCS 1/135-10(b).

2. Joint Township Cemeteries – Board of Managers

a. Appointments/Vacancies

If the referendum is approved by a majority of the voters in each of the townships or road districts, the supervisor or road commissioner appoints three people to serve on the cemetery's board of managers. The appointees must be residents of the respective townships or road districts and serve for a term of four years and until their successors are appointed. 60 ILCS 1/135-10(c). Vacancies in the board of managers created by death, resignation, removal, or otherwise will be filled in the same manner as original appointments by the supervisor of the township or highway commissioner of the road district in which the deceased, resigned, removed, or retiring member resided. 60 ILCS 1/135-15.

b. Powers of Board of Managers

The board of managers controls and manages the joint cemeteries. It may receive in trust from the proprietors or owners of any lot in the cemeteries or from any person, corporation, association, or society interested in the maintenance of those cemeteries any gift or legacy of money or real, personal, or mixed property that is donated or bequeathed to the board of managers for the use and maintenance of the lot or cemeteries. The board of managers may convert the property into money, may invest the money in securities in which trust funds may be invested under the Trusts and Trustees Act, and may apply the income perpetually for the care of the lot or the care and maintenance of the cemeteries as specified in the gift or legacy or as provided by the board of managers if the gift or legacy does not specify the manner in which the income is to be expended. 60 ILCS 1/135-20.

c. Vesting of Gift or Legacy

Every gift or legacy for any of the purposes set forth in Section 135-20 made to a cemetery by its name, if the cemetery has a board of managers appointed under this Article, will vest in the board and take effect for all purposes as if made to the board and does not fail merely because the cemetery is not incorporated. 60 ILCS 1/135-25.

d. Organization of Board of Managers

i. Officers

The cemetery board of managers, as soon as may be convenient after appointment, must meet and organize by selecting one of its members to be president and another of its members to be clerk. The board must also select a treasurer, who need not be a member of the board.

ii. Treasurer – Bond

The treasurer, before entering upon his or her duties, must execute a bond to the People of the State of Illinois for the use of the board of managers in a penal sum not less than double the value of the money and property coming into his or her hands as treasurer, conditioned for the faithful performance of the treasurer's duties and for the faithful accounting for all money and property that, by virtue of the office, comes into the treasurer's hands. The bond must be in a form and with sureties approved by the township supervisors or the highway commissioners and must be filed with the township clerk of one of the townships as determined by the supervisors or with the district clerk of one of the road districts as determined by the highway commissioners. 60 ILCS 1/135-30.

iii. Treasurer as Custodian – Annual Report

The treasurer has custody of all money and property received in trust by the cemetery board of managers and must pay out the money and property only upon the written order of the board, signed by at least four of its members. The treasurer must keep permanent books of record of all trust funds, all receipts and disbursements of trustee funds, and for what purposes trust funds were received and disbursed. The treasurer under oath must also make a report in writing to the board of managers on or before the first day of July of each year, showing balances, receipts, and disbursements, including a statement showing the amount and principal of trust funds on hand and how invested. The report must be audited by the board of managers and, if found correct, must be transmitted to the township supervisors or highway commissioners. If the report is approved by the supervisors or highway commissioners, it must be filed by them with the same township or district clerk with whom the treasurer's bond is filed under Section 135-30. 60 ILCS 1/135-35.

iv. Clerk – Records – Annual Report

The clerk of the cemetery board of managers must keep a permanent record of the proceedings of the board, signed by the president and attested by the clerk, and must also keep a permanent record of the several trust funds, from what sources the trust funds were received, the amounts of the trust funds, and for what uses and purposes the trust funds were received. The clerk under oath must also make a report in writing annually on or before the first day of July to the township supervisors or highway commissioners as to the same matters required to be reported by the treasurer of the board of managers under subsection (b) of Section 135-35. The report, if found to be correct by the supervisors or highway commissioners, must be approved by them and preserved by the cemetery board of managers. 60 ILCS 1/135-40.

v. Removal of Officers - Accounting

The township supervisors or highway commissioners may remove from office any or all of the members of the board of managers or the treasurer of the board of managers for nonperformance of duties or for misappropriation or wrongful use of funds or property held by them as trustees for the cemeteries. The supervisors or highway commissioners may require a just and proper accounting for the use of those funds or property. 60 ILCS 1/135-45.

e. Tax Rate for Maintenance of Joint Cemeteries

When 50 legal voters of each township or road district present a petition to the cemetery board of managers asking that an annual tax be levied for the control and maintenance of cemeteries, the cemetery board of managers must certify the proposition to the proper election officials, who shall submit the proposition to the voters at an election in accordance with the general election law. If a majority of all the votes cast in each township or road district upon the proposition is for a levy of the tax, the board of managers must thereafter annually levy a tax upon all property taxable by the townships or road districts of not more than 0.10% of value, as equalized or assessed by the Department of Revenue, in each township or road district. The tax must be collected in the same manner as other general taxes in the townships and road districts and, when collected, shall be deposited into a separate fund known as the Cemetery Fund. The tax shall be in addition to all other taxes that the townships or road districts are authorized to levy and collect. The limitations upon tax rates in

subsection (b) are subject to the provisions of the General Revenue Law of Illinois. 60 ILCS 1/135-50.

f. Ordinances

The cemetery board of managers may pass ordinances for the government of the cemeteries, including ordinances relating to the operating and speed of motor vehicles and the use of lots, walks, ponds, water courses, vaults, buildings, and other places within the cemeteries, and for the maintenance of good order and quiet in the cemeteries. A person found guilty of violating any ordinance is guilty of a petty offense and will be fined not less than $5 nor more than $100. No person will be disqualified from acting as a juror in a cause under such an ordinance because of any interest or ownership he or she may have in the lots of the cemeteries. 60 ILCS 1/135-55.

g. Policemen

The cemetery board of managers may appoint policemen to protect the cemeteries and preserve order in the cemeteries. The policemen have the same power with respect to any offenses committed in the cemeteries or any violation of Section 135-55 that city marshals or policemen in cities have with respect to maintaining order in those cities or arresting persons for offenses committed in those cities. 60 ILCS 1/135-60.

D. Cemetery Vandalism

Several criminal laws protect cemeteries from damage. For example, any person who defaces, vandalizes, injures, or removes a gravestone or other memorial, monument, or marker commemorating a deceased person is guilty of a felony. Further, to hunt, shoot or discharge any gun, pistol or other missile within the limits of any cemetery or to violate any of the rules made and established by the board of such cemetery is a misdemeanor. However, the discharge of firearms loaded with blank ammunition as part of any funeral, any memorial observance, or any other patriotic or military ceremony is not prohibited. Other penalties for vandalism include the collection of fines. 765 ILCS 835/1.

E. Cemetery Oversight Act

In response to the national outcry over allegations of deplorable practices at the Burr Oak Cemetery in suburban Alsip, the Illinois General Assembly adopted the extensive regulatory authority set forth in the

Cemetery Oversight Act. 225 ILCS 411/5-1 to 411/999-5.[23] Public cemeteries operated by townships are only partially exempt from the Act and must make application for such an exemption to the Illinois Department of Financial and Professional Regulation. 225 ILCS 411/5-20; 225 ILCS 411/10-20.

Even with a partial exemption, the obligations of a township cemetery include the following:

1. reasonable maintenance of the cemetery property and of all lots, graves, crypts, and columbariums, 225 ILCS 411/20-5(a);

2. creation of a map of the cemetery property delineating all lots or plots, blocks, sections, avenues, walks, alleys, and paths, 225 ILCS 411/20-5(b);

3. recordkeeping of the identity and location of every person interred, 225 ILCS 411/20-5(b-5);

4. making a cemetery map available for public inspection, 225 ILCS 411/20-5(c);

5. recordkeeping of each deceased's name, age, date of burial, and the specific location of the interred, entombed, or inurned human remains. The specific location must correspond to the cemetery map or plat, 225 ILCS 411/20-5(d);

6. entry of records to the online Cemetery Oversight Database within 10 working days of each interment, entombment, or inurnment of human remains, 225 ILCS 411/20-6;

7. vehicle traffic control for funeral processions entering and leaving cemetery grounds, 225 ILCS 411/20-8;

8. a signed contract with all parties purchasing cemetery services, including the date the arrangements were made, the price of the services and merchandise selected, the terms or method of payment, and a statement as to any monetary advances made on behalf of the family. The

[23] Note that the Cemetery Oversight Act is scheduled to be repealed on January 1, 2021.

cemetery authority shall maintain a copy of such contract in its permanent records. 225 ILCS 411/20-10;

9. acceptance of payment by a method other than cash only and provision of a receipt, 225 ILCS 411/20-12;

10. conspicuous posting of signs in English and Spanish containing a Department hotline number and information about filing a complaint, 225 ILCS 411/20-30;

11. participation in an investigation and mediation procedure in the event of a consumer complaint, 225 ILCS 411/25-3;

12. refraining from retaliatory action against cemetery managers and employees for disclosing information that might lead to an investigation, 225 ILCS 411/25-120; and

13. honoring a Consumer Bill of Rights, including availability of records, use of third-party services, lists of prices for services, avoiding imposition of services outside scope of contract, and deceptive and unfair practices, 225 ILCS 411/35-10 and 225 ILCS 411/35-15.

XX. TOWNSHIP SENIOR CITIZENS' HOUSING ACT

A. Township Board Powers

A township may construct, purchase, improve, extend, or equip senior citizens' housing. The township board has the power to do the following:

1. Own and manage residential rental property for senior citizens;
2. Donate township land for senior citizens' housing;
3. Expend township funds for the construction, financing, purchase, improvement, equipping, or management of senior citizens' housing;
4. Employ or contract with management firms to aid the township board in managing the senior citizens' housing;
5. Make contracts necessary in the exercise of its powers;
6. Enter into agreements with other governmental units to finance residential rental property for senior citizens; and
7. Issue revenue bonds payable solely from the net revenue derived from the operation of the senior citizens' housing.

60 ILCS 1/35-50.1.

B. Construction of Housing – Revenue Bonds

For the purpose of defraying the cost of senior citizens' housing, the township board, when authorized by a majority of the votes cast on the proposition, may issue and sell revenue bonds of the township. These bonds would be payable solely from the net income and revenue derived from the operation of the senior citizens' housing. The township board may also from time to time issue revenue bonds to refund any such revenue bonds at the redemption price authorized at maturity or at any time before maturity. The bonds bear interest at a rate or rates not to exceed the maximum rate authorized by the Bond Authorization Act; the interest is payable semiannually; and the bonds mature within the period of usefulness of the project involved, as determined in the sole discretion

of the township board and in any event not more than 40 years from the dated date of the bonds.

The bonds are sold in the manner determined by the township board and, whenever the bonds are sold at a price less than par, they shall be sold at a price and bear interest at a rate or rates such that either the true interest cost (yield) or the net interest rate, as selected by the township board, received on the sale of the bonds, does not exceed the maximum rate otherwise authorized by the Bond Authorization Act. If any officer whose signature appears on the bonds or coupons attached to the bonds ceases to be an officer before the delivery of the bonds to the purchaser, that signature is nevertheless valid and sufficient for all purposes to the same effect as if that officer had remained in office until the delivery of the bonds. Notwithstanding the form or tenor of the bonds, and in the absence of expressed recitals on the face of the bonds that the bonds are nonnegotiable, all bonds issued have all the qualities of negotiable instruments under Illinois law.

Not less than 30 days before the making of a contract for the sale of bonds to be issued under Section 35-50.1 through 35-50.6, the township board shall give written notice to the Executive Director of the Illinois Housing Development Authority. Within 30 days after receiving the notice, the Executive Director of the Illinois Housing Development Authority must give written notice to the township board stating whether it will finance the senior citizens' housing. If the Illinois Housing Development Authority notifies the township board that it will not finance the senior citizens' housing, the township may finance the senior citizens' housing or seek alternative financing from any other available source. 60 ILCS 1/35-50.2.

C. Ordinance Describing Project – Submission to Voters

A township board must initiate proceedings for the issuance of bonds under Sections 35-50.1 through 35-50.6 by adopting an election ordinance describing briefly the authority under which the bonds are proposed to be issued, the nature of the project to be financed, the estimated total cost of the project, and the maximum amount of revenue bonds authorized to be issued. No further details or specifications are required in the election ordinance, except as otherwise required by the Election Code and Sections 35-50.1 through 35-50.6 of the Senior Citizens' Housing Act.

The election ordinance will direct that a proposition to construct, purchase, improve, extend, or equip senior citizens' housing and to issue

revenue bonds payable solely from the net revenue derived from the operation of the senior citizens' housing be submitted to the voters of the township at an election designated in the ordinance. The township clerk will certify the proposition to the proper election authority for submission to the voters in accordance with the general election law. The election authority will give notice of the election in accordance with the general election law. The form of the proposition is set out in statute.

If a majority of the voters voting on the question at the election vote in favor of it, the township board may adopt additional ordinances or proceedings supplementing or amending the election ordinance so long as the maximum amount of bonds as set forth in the election ordinance is not exceeded and no material change is made in the project described in the election ordinance. The additional ordinances must fix the amount of revenue bonds to be issued, the maturity or maturities, the interest rate or rates, and all other details in connection with the bonds deemed advisable. The additional ordinances may contain covenants and restrictions on the issuance thereafter of additional revenue bonds as deemed necessary or advisable for the assurance of the payment of bonds thereby issued. Bonds issued pursuant to additional ordinances and proceedings must bear a date or dates, may be in a form, may carry registration privileges, may be payable at a place or places, may be subject to redemption in a manner and on terms with or without premium, may be executed in a manner, may contain terms and covenants, all as provided by the additional ordinances and proceedings. The additional ordinances or proceedings must become effective immediately without publication or posting or any further act or requirement. 60 ILCS 1/35-50.3.

D. Security for Bonds

To secure payment of any or all of the bonds, any additional ordinance supplementing or amending the election ordinance must set forth the covenants and undertakings of the township in connection with (i) the issuance of the bonds and the issuance of additional bonds payable from the net revenue or income to be derived from the operation of the senior citizens' housing and (ii) the use and operation of the senior citizens' housing. The additional ordinance may also provide that the bonds or those that are specified will be subordinate and junior with respect to the payment of principal and interest to other bonds designated in the ordinance. The additional ordinance may provide that the bonds be secured by a trust agreement or depositary agreement by and between the township board and a corporate trustee, which may be a trust company or a bank having powers of a trust company within this State. The agreement

may contain provisions for directing and enforcing the rights and remedies of the bondholders deemed reasonable and proper, including the terms upon which the trustee and the bondholders, or either of them, may enforce their rights, but no trust agreement, depositary agreement, or other instrument securing the bonds can convey, mortgage, or otherwise create any lien on the properties constituting the senior citizens' housing, other than the net revenues with respect thereto as described in these statutory provisions. 60 ILCS 1/35-50.4.

E. Rules and Regulations – Rates and Charges – Use of Revenues From Operation

The township board of any township enjoys three classes of power when dealing with senior citizens' housing under the provisions described above. First, the township board may make and enforce rules and regulations for the creation of the senior citizens' housing and the use thereof. Second, the board may make and enforce all rules, regulations, and ordinances for the care and protection of the senior citizens' housing. Third, the board may charge the residents of the senior citizens' housing a reasonable rent for the privilege of residing in the senior citizens' housing.

The rents charged to residents of senior citizens' housing must be sufficient at all times to pay the cost of operating and maintaining the senior citizens' housing; to provide an adequate depreciation fund if deemed necessary by the township board; and to pay the principal of and interest on all revenue bonds issued for senior citizens' housing under these provisions. Rents must be established by ordinance and become payable as the township board determines by ordinance.

Whenever revenue bonds are issued for senior citizens' housing under these provisions, sufficient revenue derived from the operation of senior citizens' housing must be deposited into a separate fund designated as the Senior Citizens' Housing Fund of the township. It must be used only under three scenarios: (i) to pay the cost of maintenance and operation of the senior citizens' housing, (ii) to provide an adequate depreciation fund if deemed necessary by the township board, and (iii) to pay the principal of and interest on the revenue bonds of the township issued under these provisions. 60 ILCS 1/35-50.5.

F. Supervisor – Bond Proceeds and Revenues

The township supervisor is the ex officio treasurer and custodian of all funds derived from the issuance and sale of bonds for senior citizens'

housing under these provisions and of all income and revenue derived from the operation of the senior citizens' housing. Before the supervisor receives any funds, the supervisor must post with the township board, subject to their approval, a separate corporate surety bond in an amount determined by resolution of the township board. The supervisor must keep the proceeds of bonds issued and revenues derived from the operation of the senior citizens' housing separate and apart from all other funds that come into the supervisor's hands as supervisor and ex officio treasurer of the township. The supervisor must deposit the proceeds derived from the sale of bonds and the income and revenues derived from the operation of the senior citizens' housing in separate bank or savings and loan association accounts in a depositary designated by the township board for that purpose, provided, however, that any funds not so deposited must be invested only in investments that are permitted for the township under the Public Funds Investment Act. 60 ILCS 1/35-50.6.

XXI. PUBLIC COMFORT STATIONS

A. Establishment, Equipment and Maintenance

A township board may provide for the establishment, equipment, and maintenance of public comfort stations. 60 ILCS 1/155-5. A "public comfort station" is an institution where waiting rooms, restrooms, toilet rooms, lavatories, check rooms, drinking water, and similar facilities are freely available for convenience of the public. 60 ILCS 1/155-10. None of the powers conferred by these provisions can be exercised unless the question of establishing public comfort stations has been submitted to the electors of the township and approved by a majority of the voters voting upon the proposition. 60 ILCS 1/155-25.

B. Sites, Building, Rooms, Equipment and Attendants

In establishing, equipping, and maintaining public comfort stations, the township may construct, purchase, lease, or accept donations of ground sites, buildings, rooms, and the necessary equipment and may employ necessary attendants. 60 ILCS 1/155-15.

C. Tax

A tax of not more than 0.03% or the rate limit in effect on July 1, 1967, whichever is greater, of the value, as equalized or assessed by the Department of Revenue, of all taxable property within each township that has established a public comfort station must be assessed, levied, and collected by the township in the manner provided for the assessment, levy, and collection of other taxes for corporate purposes. The proceeds of this tax must be kept in a separate fund and used for the establishment, equipment, and maintenance of public comfort stations and for no other purpose. The foregoing limitations upon tax rates may, however, be increased under the referendum provisions of the General Revenue Law of Illinois. 60 ILCS 1/155-20. All taxes are subject to the tax cap, if applicable. For further information on tax levies, see Chapter IX on Township Finances.

XXII. TOWNSHIP WATERWORKS AND SEWERAGE SYSTEMS

A. Operation and Funding

Any township having a population of less than 500,000 may construct or purchase and operate a waterworks system or a sewerage system or a combined waterworks and sewerage system. This township may also improve or extend the system from time to time and fund the system through the use of appropriated general township and federal revenue sharing funds and other income or revenue derived from the operation of the system, or from the sale of revenue bonds. A township that owns and operates a sewerage system or a combined waterworks and sewerage system may enter into and perform contracts with an industrial establishment. These contracts may cover the provision and operation by the township of sewerage facilities to abate or reduce the pollution of waters caused by discharge of industrial wastes. The contracts may also entail payment by the industrial establishment to the township to compensate for the cost of operating and maintaining the sewerage facilities serving the industrial establishment. 60 ILCS 1/205-10.

To pay the cost of any such system, the township board may appropriate township funds, including Federal Revenue Sharing funds, and issue and sell revenue bonds of the township payable solely from the income and revenue derived from the operation of the system. The board may also issue revenue bonds to refund any bonds at maturity or pursuant to redemption provisions or at any time before maturity with the consent of the holders of the bonds. All bonds must be authorized by ordinance adopted by the township board, must bear a date or dates, may mature at a time or times not exceeding 40 years from their respective dates, and may bear interest (i) at a rate not exceeding the maximum rate authorized by the Bond Authorization Act, and (ii) at the maximum rate authorized by the Bond Authorization Act.

Bonds must be sold for not less than par and accrued interest. The bonds must be payable solely from the income and revenue to be derived from the operation of the system. In addition, all bonds issued must be negotiable instruments.

To secure payment of any or all of the bonds, the ordinance must set forth the covenants and undertakings of the township in connection with the issuance of the bonds, the issuance of additional bonds payable from the revenue or income to be derived from the operation of the system, and

the use and operation of the system. The ordinance may also provide that the bonds shall be subordinated and be junior in standing with respect to the payment of principal and interest and the security of payment to other bonds designated in the ordinance. If any officer whose signature appears on the bonds or coupons attached to the bonds ceases to be an officer before the delivery of the bonds to the purchaser, that signature will nevertheless be valid and sufficient for all purposes to the same effect as if the officer had remained in office until the delivery of the bonds. 60 ILCS 1/205-15.

B. Extending Services

A municipality may adopt an ordinance requesting a township to develop a sewage and/or waterworks system. Upon this adoption, the township may develop such a system. 60 ILCS 1/205-50.

C. Powers of Board of Township Trustees – Publication of Ordinances

The township board has the supervision and control of the system and may make, enact, and enforce all necessary rules and regulations in connection with the acquisition of the system and its use. Rules and regulations are established by ordinance. Rates and charges are in force as the township board determines by ordinance. Rates or charges established by the township board are not subject to any statutory regulations covering rates or charges for similar service by privately owned waterworks systems. In addition, the township board may enact and enforce reasonable rules and regulations requiring the owner of improved real estate to connect into a township system when that improved real estate abuts any street, alley, or other public way or sewer right of way in which any line of the system exists.

An ordinance establishing rules and regulations or rates or charges for use and service must be published within 30 days after its adoption in a newspaper published and having general circulation in the township. If no such newspaper exists, then the ordinance must be posted in at least five of the most public places in the township. The ordinance must not become effective until 10 days after publication or posting, as the case may be. 60 ILCS 1/205-80.

D. Compensation of Trustees and Supervisor

Compensation for any services performed by members of the township board, the township supervisor as ex officio treasurer, and the

township clerk as recording officer in connection with the maintenance and operation of a system must be fixed by ordinance by the township board before the issuance of any bonds. The compensation is not to be increased while any revenue bonds issued after the adoption of an ordinance fixing compensation are outstanding. 60 ILCS 1/205-85.

E. Accounts and Audits

The township board of each township must maintain a proper system of accounts showing the receipts from the operation of the system and the application of those receipts and must at least once each year cause the accounts to be properly audited by independent public accountants. Copies of the audits must be filed in the office of the township clerk and must be made available for inspection at all proper times by any water user, township board member, or other interested person. 60 ILCS 1/205-90.

F. Fiscal Year – Budget – Disbursements

Upon the acquisition of a system, the township board must establish the beginning and ending of the fiscal year for the operation of the system. That period must constitute the budget year for the maintenance and operation of the system.

At least 30 days before the beginning of the first fiscal year after the acquisition of the system, the township board must prepare a tentative budget and include all proposed operation and maintenance expenses for the ensuing fiscal year. The budget must be considered by the township board, and after consideration and any revision by the board, it must be adopted not later than 30 days after the beginning of the fiscal year. No expenditures in excess of the budget must be made during the fiscal year unless authorized by a two-thirds vote of the township board.

Including in the budget any statement of expenditures for debt service is not necessary, but the board must make provision for those payments as they become due. No money can be paid from the water fund of the township except under an order signed by the supervisor and township clerk and approved by the township board. Each order must specify the purpose for which it is to be paid, and there must be endorsed on the order the name of the particular account out of which it is payable. 60 ILCS 1/205-95. For further financial information, see Chapter IX on Township Finances.

G. Bidding – Water System

Please see Chapter XI(H) for a detailed discussion of bidding.

H. Liens and Recovery of Amounts Due

Townships may establish a date after which water and sewer charges become delinquent and attach liens to the real estate for delinquent charges by filing a notice of lien. 60 ILCS 1/205-75(a–b). Township water and sewer liens do not have priority over prior existing liens; however, the township may elect to enforce its liens by filing foreclosure proceedings or a civil action in circuit court to recover the amounts due, plus reasonable attorney's fees. 60 ILCS 1/205-75(b–d). Additionally, the Township Code allows townships to discontinue water and sewer service to a premises that is delinquent in payment more than 30 days after notice and an opportunity for a hearing. 60 ILCS 1/205-75(e).

XXIII. TOWNSHIP HOSPITALS

A. Establishment – Bonds

Townships may vote by referendum to create and maintain a public hospital. On the petition of not less than 5% of the registered voters of any township having a population of less than 500,000, the township clerk must certify the question of creating and maintaining a hospital for the election. As with other propositions, the proposition's form is set out by statute. 60 ILCS 1/170-10.

In establishing a hospital, the township also enjoys the power to issue bonds. Any township having a population of less than 500,000 may do so. If a township utilizes its authority to levy a tax, the township is prohibited from carrying out these acts for the support of a public hospital located outside of the township unless so authorized by referendum. 60 ILCS 1/170-5. This authority has been interpreted to allow a township hospital to improve and extend an existing hospital by constructing an adjoining nursing care facility. Bohleber v. Carmi Twp. Hosp., 30 Ill. App. 3d 969, 303 N.E.2d 505 (5th Dist. 1975).

B. Tax Referendum

A referendum will be held to decide if an annual tax, not to exceed one and two-thirds mills on the dollar, will be levied on all the taxable property of the township for the maintenance and operation of a public nonsectarian hospital. This referendum may be held whenever at least 5% of the registered voters of a township file a petition with the township clerk requesting the referendum. The township clerk must then give notice that at the next annual township election the referendum question will be considered.

By contrast, if a referendum is ordered to be held at the township meeting, notice must be given by posting notices in at least 10 of the most public places in the township at least 10 days before the day of the meeting. If an election is requested, the township clerk must certify that proposition to the proper election officials, who must submit the proposition in accordance with the general election law. 60 ILCS 1/175-5.

The township clerk must file a petition with the county clerk of the county in which the township is located, reciting that the township clerk certified the proposition to the proper election officials. This petition must also recite that the election officials submitted the proposition at an

election in and for the township in response to a petition signed by 25 voters for the purpose of submitting the proposition of establishing a public hospital and that the election carried by a majority of the voters voting at the election on the question. The township clerk's petition must also request the township board to appoint a board of directors for the management and operation of the hospital. 60 ILCS 1/170-15.

C. Board of Directors

1. Membership and Terms

The township board must appoint five persons to serve on the Hospital Board of Directors. Such service is without compensation. The first directors appointed will hold office respectively for one, two, three, four, and five years from the first Monday in the month following their appointment and until their successors are appointed and qualified. On or after the first Monday in May of each succeeding year, the township board must appoint one director whose term will be for five years, commencing the first Monday in May of the year he or she is appointed. Each appointment of a successor director must be made in the same manner and under the same conditions as the appointment of his or her predecessor. The length of the term of the first directors appointed must be determined by lot at their first meeting, which must be held not less than 30 days after their appointment. A majority of the board of directors constitute a quorum, but a smaller number may adjourn from day to day.

The township board may increase the membership of the hospital board to seven directors by resolution. This resolution will not affect the terms of the incumbent directors. Before the first Monday in May following the adoption of the resolution, the township board must appoint three hospital directors, one to succeed the incumbent whose term expires and the two additional directors provided for in the resolution, for terms of three, four, and five years from the first Monday in May of the year of the appointment. Thereafter, upon the expiration of the term of any hospital director, the director's successor must be appointed for a term of five years and until a successor is appointed and qualified for a like term.

If the township board has by previous resolution increased the membership of the hospital board to seven directors, the township board may by new resolution increase the membership of the board by two new members in any one year up to a maximum of 11 directors. The new resolution must not affect the terms of the incumbent directors. Before the first Monday in May following the adoption of the new resolution, the

township board must appoint a sufficient number of hospital directors so that there will be (i) a successor for the full term of each incumbent whose term expires and (ii) the two additional directors provided for in the new resolution for terms of four and five years from the first Monday in May of the year of appointment. Thereafter, upon the expiration of the term of any director, his or her successor must be appointed for a term of five years and until a successor is appointed and qualified for a like term. 60 ILCS 1/170-15.

2. Interest in Contracts Prohibited

No hospital director or employee of the township can be directly or indirectly interested (i) in any contract, work, or business of the township, (ii) in the sale of any article whose expense, price, or consideration is paid by the township, or (iii) in the purchase of any real estate or property for or belonging to the township. 60 ILCS 1/170-15.

3. Vacancies

Whenever a vacancy in a township hospital board of directors occurs from a director's death, resignation, refusal to qualify, or for any other reason, including a criminal conviction in any state or federal court, the township board may fill the vacancy by appointment. The person appointed or qualified for office must assume the duties of that person for whose unexpired term that person was appointed. 60 ILCS 1/170-15.

4. Powers

The hospital board of directors constitutes the governing body of the public hospital; they are the corporate authorities of the township for that purpose and constitute a body separate and distinct from other officers of the township. The hospital board of directors exercises all powers and manages and controls all of the affairs and property of the public hospital, may sue and be sued in their corporate name, and may adopt a corporate seal and change it at pleasure. The hospital board of directors may approve the provision of any service and approve any contract or other arrangement not prohibited to a hospital licensed under the Hospital Licensing Act, incorporated under the General Not-For-Profit Corporation Act, and exempt from taxation under paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code. 60 ILCS 1/170-20.

5. Election of Officers

Within 30 days after their appointment and at the first meeting in May of each year thereafter, the hospital board of directors must elect one of their number chairman and one of their number vice chairman. The hospital board must elect a secretary and a treasurer, neither of whom can be members of the board of directors. The secretary and treasurer must perform duties and receive salaries prescribed by the board of directors, and each of those officers must furnish bonds in a sum fixed by the hospital board of directors for the use and benefit of the public hospital. In addition, the board of directors may employ and appoint a person or persons as they deem necessary and expedient for the operation of the public hospital and its affairs and prescribe their salaries and duties. 60 ILCS 1/170-20.

6. Statement of Financial Affairs

The hospital board of directors must, within 30 days after the close of each fiscal year, prepare and file with the township clerk a full statement of the financial affairs of the hospital. This statement will show five items. First, it will show the balance (if any) received by the hospital board from any source. Second, it will show the amount of tax levied the preceding year for the hospital. Third, it will show the amount collected and paid over to the hospital board. Fourth, it will show the amount paid out by the hospital board and on what account, including any amount paid out on indebtedness (specifying the nature and amount of the indebtedness, the amount paid on the indebtedness, the amount paid on principal, and the amount paid on interest account). Finally, the statement will also show the amount and kind of all outstanding indebtedness due and unpaid, the amount and kind of indebtedness not yet due, and when the indebtedness not yet due will mature.

The township clerk must record the statement in the record book of the township as soon as it is filed. The township clerk, within 30 days after receiving the statement, must also cause the statement to be published in a newspaper of general circulation published within the township in which the hospital is situated. If no newspaper of general circulation is published in the township, the report must be published in any newspaper generally circulated in the township. 60 ILCS 1/170-25.

7. Penalty for Non-Compliance

Any hospital board of directors or township clerk who willfully neglects to comply with this Section must forfeit and pay to the township

the sum of not less than $50 nor more than $200 to be sued for and recovered by the township and appropriated for repairs of highways and bridges in the township. 60 ILCS 1/170-20. Moreover, purchases made pursuant to this Act must be made in compliance with the “Local Government Prompt Payment Act,” approved by the 84th General Assembly. 50 ILCS 505/1, *et seq*.

D. Sale of Hospital

The hospital board of directors by resolution may enter into contracts for the transfer, sale, or lease of the public hospital and its facilities to a responsible corporation, hospital, health care facility, unit of local government, or institution of higher education. This contracting may be done provided the transfer, sale, or lease does not adversely affect access to the hospital by inhabitants of the township. At least 10 days before the adoption of such a resolution, the hospital board of directors must make the proposed resolution conveniently available for public inspection and shall hold at least one public hearing on the proposed resolution. Notice of the hearing must be published in one or more newspapers having general circulation in the township at least 10 days before the time of the public hearing. The notice must state the time and place of the hearing and the place where copies of the proposed resolution will be accessible for examination.

Before the sale or lease of the hospital, a labor organization may have been recognized by the hospital as the exclusive representative of the majority of employees in a bargaining unit for purposes of collective bargaining. If this recognition has occurred and if a purchaser or lessor subject to the National Labor Relations Act retains or hires a majority of the employees in the bargaining unit, then the purchaser or lessor must recognize the labor organization as the exclusive representative of the majority of employees in that bargaining unit for purposes of collective bargaining. This occurs, of course, provided the labor organization makes a timely written assertion of its representational capacity to the purchaser or lessor. 60 ILCS 1/170-25.

E. Borrowing Money and Issuing Bonds

The hospital board of directors may borrow money and issue bonds for the purpose of acquiring by purchase, constructing, improving, extending, repairing, or equipping any public hospital in and for the township in any amount not to exceed 5.75% on the valuation of taxable property in the township. Whenever the hospital board of directors desires

to issue bonds, it must adopt a resolution authorizing the issuance of the bonds, prescribing all the details of the bonds, and stating the time or times when the principal of and the interest on the bonds shall become payable and the place of payment of the principal and interest. The bonds must be payable within not less than 3 nor more than 20 years from the date of issuance and must be issued to bear interest at not to exceed the greater of (i) the maximum rate authorized by the Bond Authorization Act, as amended at the time of the making of the contract or (ii) the rate of 9% per annum. The resolution must provide for the levy and collection of a direct annual tax upon all the taxable property within the corporate limits of the township sufficient to meet the principal of and interest on the bonds as it matures. The tax shall be in addition to and in excess of any other tax authorized to be levied by the township.

A certified copy of the resolution providing for the issuance of the bonds must be filed with the county clerk of the county in which the township is located and will constitute the basis and authority of the county clerk for the extension and collection of the tax necessary to pay the principal of and interest upon the bonds issued under the resolution. No resolution providing for the issuance of bonds will be effective until it has been certified to the proper election officials. These officials must then submit the resolution to a referendum of the electors of the township. 60 ILCS 1/170-35.

F. Charges for Use of Hospital

Every public hospital must be maintained for the benefit of the inhabitants of the township by which it is established. Every inhabitant of the township who is not a pauper must pay to the board of directors or to a designated employee of the board reasonable compensation for occupancy, nursing, care, medicine, or attendance, according to the rules and regulations prescribed by the board of directors. The public hospital must always be subject to reasonable rules and regulations adopted by the hospital board of directors to render the use of the hospital of the greatest benefit to the greatest number. The hospital board of directors may exclude from the use of the hospital all inhabitants and persons who willfully violate any of the reasonable rules and regulations established by the board. The board of directors may further extend the privileges and use of the public hospital to persons residing outside of the township upon terms and conditions prescribed by the board of directors in its rules and regulations. 60 ILCS 1/170-40.

G. Leasing Hospitals

A township having a population of more than 125,000 and situated within a county having a population of between 150,000 and 500,000 may lease the home, infirmary, or hospital from the county in a manner and upon terms as it deems best for the interest of the township. The township may thereafter operate, maintain, improve, or expand the institution. 60 ILCS 1/180-5.

XXIV. TOWNSHIP SPECIAL SERVICE AREAS

A. Provision of Township Special Service Areas

"Township special service area" means a contiguous area within a township in a county with a population of more than 3,000,000 in which special services are provided in addition to those services provided generally throughout the township. Territory is considered contiguous even though one or more completely surrounded portions of the territory are excluded from the township special service area. 60 ILCS 1/207-5. "Special services" include land acquisition, development, construction, and maintenance of streets, sidewalks, lighting, sewers, water systems, and other necessary adjuncts.

A township special service area may be established in a township as provided by Article 207. The cost of the special services shall be paid by bonds issued as provided by these provisions as well. If a township exercises the power granted to issue bonds for township special services, then an ad valorem tax shall be levied upon property within the township special service area to retire the bonds. 60 ILCS 1/207-10. Once a special service area is established, the township board of the township is the governing body of a township special service area. 60 ILCS 1/207-15. A special service area can be funded by bonds or on a "pay-as-you-go" basis.

B. Referendum

The question of establishing a township special service area may be presented to the legal voters of an area by resolution of the township board of the township in which the area lies or by petition of the voters acting on their own initiative.

A resolution by the corporate authorities to initiate a referendum must include, at a minimum, the following: the special services to be provided; the boundaries of the proposed special service area by general description and the property index numbers of the parcels within the proposed township special service area; the maximum amount of bonds to be issued and the period of time over which the bonds will be retired; the stated need and local support for the proposed township special service area; and the election at which the proposition is to be submitted to the electors in the proposed township special service area. The township clerk must certify the question to the proper election officials who then submit the question to the voters at the next regular election.

A petition for a referendum on this question on the voters' own initiative shall be signed by not fewer than 10% of the legal voters in the proposed township special service area and must include, at a minimum, the following: the special services to be provided; the boundaries of the proposed special service area by general description and the property index numbers of the parcels within the proposed township special service area; the maximum amount of bonds to be issued and the period of time over which the bonds will be retired; the stated need and local support for the proposed township special service area; and the election at which the proposition is to be submitted to the electors in the proposed township special service area. The petition must be filed with the township clerk. The township clerk must certify the question to the proper election officials, who then submit the question to the voters at the next regular election. 60 ILCS 1/207-20. The question on the ballot must be submitted to the voters in the proposed township special service area in substantially the form provided by statute.

If a majority of the electors voting on the question vote in the affirmative, the township board may by ordinance establish the township special service area, issue bonds up to the maximum amount authorized, and levy an ad valorem tax upon the property in the township special service area to retire the bonds. If the area is within one or more municipalities, the township board may not establish the township special service area, issue bonds, or levy a tax until the municipality or municipalities have certified to the township clerk an ordinance consenting to the creation of the township special service area. A township may establish a township special service area within the unincorporated area of a county without the consent of the county. 60 ILCS 1/207-25.

C. Issuing Bonds

Bonds secured by the full faith and credit of the area included in the township special service area may be issued for providing the special services in an amount not to exceed the amount authorized by the voters at the referendum under Section 207-25 and not to be retired over a longer period of time than authorized at the referendum. Bonds, when so issued, must be retired by the levy of ad valorem taxes against all of the taxable real property included in the township special service area as provided in the referendum establishing the township special service area and authorizing the issuance of the bonds. The county clerk must annually extend ad valorem taxes against all of the taxable property situated in the county and contained in the special service area in amounts sufficient to

pay maturing principal and interest of those bonds without limitation as to rate or amount and in addition to and in excess of any taxes that may now or hereafter be authorized to be levied by the township. Bonds issued pursuant to this Article cannot be regarded as indebtedness of the township for the purpose of any limitation imposed by any law. All bonds must be issued in accordance with the provisions of the Local Government Debt Reform Act. 60 ILCS 1/207-30.

D. Tax Levy Extension

If bonds are issued and a property tax is levied, the tax must be extended by the county clerk in the township special service area in the manner provided by Articles 1 through 26 of the Property Tax Code based on equalized assessed values as established under Articles 1 through 26 of the Property Tax Code and billed and collected in the manner provided by Articles 1 through 26 of the Property Tax Code. The township clerk must file with the county clerk and also with the county recorder a certified copy of the ordinance creating the special service area; a list of the special services to be provided; the boundaries of the special service area by complete legal description and by an accurate map; a list of the property index numbers of the parcels within the township special service area; the maximum amount of bonds to be issued; and the period of time over which the bonds will be retired. The corporate authorities of the township may levy taxes in the township special service area prior to the date the levy must be filed with the county clerk for the same year in which the information required by these provisions is filed with the county clerk. In addition, the corporate authorities must file a certified copy of each ordinance levying ad valorem taxes to retire the bonds in accordance with the time requirement to levy for bonds specified in the Local Government Debt Reform Act. 60 ILCS 1/207-35.

XXV. TOWNSHIP ROAD DISTRICTS

A. Highway Commissioner

Townships and road districts are two separate and distinct units of Illinois local government. In each road district, except in a county unit road district and except in municipalities that have created a road district, a highway commissioner must be elected. The highway commissioner of each road district comprised of a single township is an officer of that township. 605 ILCS 5/6-112.

The township highway commissioner or the road district commissioner has all the road district roads under his or her jurisdiction except those inside incorporated cities and villages. He or she is responsible for their construction and maintenance to the extent that the electors provide him or her with the funds for such. The commissioner can only do what the statutes say he or she can do, and he or she has no authority beyond that point. In no case has he or she the legal right to spend more money than the township board of trustees appropriates for road purposes.

Township and road district commissioners have sole jurisdiction over the roads and bridges of the district and are not subject to direction of the township board, with certain exceptions. Township boards are not required to and do not have authority to approve road district contracts or intergovernmental agreements, unless the township is also a party to the contract or intergovernmental agreement in addition to the road district.

1. Term of Office and Time of Taking Office

Except as otherwise provided with respect to highway commissioners of township and consolidated township road districts, on the first Tuesday in April in 1985 and every four years thereafter in all counties, other than counties in which a county unit road district has been established and other than in Cook County, the highway commissioner of each road district and the district clerk of each road district having an elected clerk is elected to hold office for a term of four years and until his or her successor is elected and qualified. Each highway commissioner enters upon the duties of his or her office on the third Monday in May after his or her election.

In each township and consolidated township road district outside Cook County, highway commissioners are elected at the election provided

for such commissioners by the general election law in 1981 and every four years thereafter to hold office for a term of four years and until his or her successor is elected and qualified. The highway commissioner of each road district in Cook County is elected at the election provided for said commissioner by the general election law in 1981 and every four years thereafter for a term of four years and until his or her successor is elected and qualified.

In road districts comprised of a single township, the highway commissioner is elected at the election provided for said commissioner by the general election law. All elections are conducted in accordance with the general election law. 605 ILCS 5/6-116. Effective January 1, 2020, the General Assembly amended the Illinois Highway Code, providing an exception to the general rule that no person is eligible to be highway commissioner unless he is a voter in the district and has resided in the district for at least one year. A non-resident (or resident who has lived in the district for less than one year) may be appointed by a board of trustees if: (1) the district is within a township with no incorporated town; (2) the township has a population of less that 500; and (3) no qualified candidate who has resident in the township for at least one year is willing to serve as highway commissioner. 605 ILCS 5/6-115.

2. Duties

The highway commissioner has general charge of the roads of his or her district, to keep the same in repair and to improve them so far as practicable, and to cooperate and assist in the construction or improvement of such roads with labor furnished in whole or in part by the Department of Human Services or other public assistance authorities. 605 ILCS 5/6-201.8. Additionally, the commissioner has the following duties.

a. Highway Commissioner's Report

The township board must receive the township highway commissioner's report within 30 days preceding the annual town meeting. Said report must include the following in writing, showing:

- The amount of road money received by the district and a full and detailed statement as to how and where expended and the balance, if any, unexpended;

- The amount of liabilities incurred and not paid, and if such liabilities are undetermined they must be estimated; and the

determined or estimated amount owing to each creditor who must be named;

- An inventory of all tools having a present value in excess of $200, machinery and equipment owned by the district and the state of repair of these tools, machinery and equipment;

- Any additional matter concerning the roads of the district the highway commissioner feels appropriate.

In consolidated township road districts in counties under township organization and in road districts in counties not under township organization, such report must be made not later than the last Tuesday in March to the district clerk, who must file the same in his or her office and he or she must record such report at large in the records of the district. 605 ILCS 5/6-201.15.

b. Surplus Money Paid to Highway Commissioner

Whenever a township board that obtains or receives surplus monies determines by resolution that a particular amount or portion of the surplus monies be paid to the highway commissioner of the township for road and bridge purposes, the township supervisor must pay that amount to the highway commissioner of the township and take the highway commissioner's receipt for the payment. 60 ILCS 1/285-15.

c. Recording

i. Recording of Road Plats

Whenever any township or district road is laid out, widened, or altered in accordance with the Highway Code, the Highway Commissioner must make and record a plat in the office of the recorder of deeds of the county (or in the office of the registrar of titles for the county if appropriate) in accordance with the provisions of Section 9 of "An Act to revise the law in relation to plats." 605 ILCS 5/6-328.

ii. Vacated Township or District Roads

Upon the vacation of any township or district road or part thereof, the highway commissioner must record a legal description of the road or part thereof vacated in the office of the recorder of deeds of the county. 605 ILCS 5/6-329.

iii. Certain Roads Used as Public Highways Must be Recorded in Office of District Clerk

The highway commissioner must cause such roads used as public highways as have been laid out or dedicated to public use but not sufficiently described and such as have been used for 15 years but not recorded, to be ascertained, described, and entered of record in the office of the district clerk. 605 ILCS 5/6-201.4.

d. Bidding – Construction and Maintenance of Roads

The highway commissioner oversees construction, maintenance, and repair and is responsible for the construction, maintenance, and repair of roads within the district, letting contracts, employing labor, and purchasing material and machinery therefore, subject to certain limitations.

Except for professional services, when the cost of construction, materials, supplies, or new machinery or equipment exceeds $20,000, the contract for such construction, materials, supplies, machinery, or equipment shall be let to the lowest responsible bidder after advertising for bids at least once and at least 10 days prior to the time set for the opening of such bids in a newspaper published within the township or road district, or, if no newspaper is published within the township or road district, then in one published within the county, or, if no newspaper is published within the county, then in a newspaper having general circulation within the township or road district, but, in case of an emergency, such contract may be let without advertising for bids. For purposes of this Section, "new machinery or equipment" is defined as that which has been previously untitled or that which shows fewer than 200 hours on its operating clock and that is accompanied by a new equipment manufacturer's warranty. 605 ILCS 5/6-201.7. See Chapter XI, Section H for a complete discussion of bidding.

e. Payments on Contracts

All final payments on contracts for the construction or repair of roads, including the constructing or repairing bridges or culverts, must be made payable as soon as the work under such contract is completed and accepted by the highway commissioner. The highway commissioner must submit all warrants, bills, and orders for such final payments to the township board of trustees or the highway board of auditors within 30 days after the receipt of the bill. 605 ILCS 5/6-410. The township board's role in reviewing the road district's bills is to perform an auditing

function. This would generally mean that the township board would make sure that sufficient funds are in the budget and that the expenditures are supported by appropriate documentation authorized by the highway commissioner. The auditing function does not extend to vetoing or second-guessing payments that the highway commissioner has authorized for payment, unless, for example, the warrant is not supported by appropriate justification or the budget does not include sufficient funding.

f. Highway Commissioner's Pecuniary Interests in Leases

In townships with a population of less than 15,000, with the approval of the township board or the highway board of auditors as the case may be, a highway commissioner may have a pecuniary interest in lease contracts if the aggregate total of those contracts is less than $2,000 in the same fiscal year. 605 ILCS 5/6-411. For additional information on potential conflicts, see Chapters X and XI.

g. Purchase or Lease of Highway Construction and Maintenance Equipment

The highway commissioner has the authority to purchase, lease or to finance the purchase of highway construction and maintenance equipment under contracts providing for payment in installments over a period of time of not more than 10 years with interest on the unpaid balance owing not to exceed 9%. The purchases or contracts are subject to the bid provisions of 605 ILCS 5/6-201.7. In single township road districts, sale of road district property including, but not limited to, machinery and equipment shall be subject to elector approval as provided in Section 30-50 of the Township Code. However, the electors delegate the power to purchase, sell, or lease property to the township board for a period of up to 12 months and the township board may specify properties being considered. A trade-in of old machinery or equipment on new or different machinery or equipment must not be construed as the sale of road district property. 605 ILCS 5/6-201.17.

h. Cooperation With Other Highway Authorities in Use of Machinery, Equipment or Tools

A highway commissioner has authority to make agreements with the highway commissioner of any other road district or with the corporate authorities of any municipality located in the same county or in an adjoining county or with the county board of the county in which such road district is located or of any adjoining county for the lease or

exchange of idle machinery, equipment, or tools belonging to the district, upon such terms and conditions as may be mutually agreed upon. 605 ILCS 5/6-201.10. A highway commissioner cannot, however, use any township machinery or equipment in performance of services for individual citizens, not connected with roads, streets, alleys, bridges, etc., either for hire or gratuitously. Cosgrove v. Highway Comm'r. of the Town of Rockville, 281 Ill. App. 406 (2d Dist. 1935); People v. Hedges, 289 Ill. 378, 124 N.E. 620 (1919); Ohio & M. Ry. Co. v. People ex rel. Calvin v. People, 123 Ill. 648 (1888).

i. Reporting Class II and Class III Roads to Illinois Department of Transportation

As referenced under Section G. Other Road District Powers and Duties, *infra*, local agencies are responsible for reporting all Class II and Class III roads to the Illinois Department of Transportation.

3. Compensation

Unless an annual salary is fixed, the highway commissioner must receive for each and every day he or she is necessarily employed in the discharge of his or her duties a per diem to be fixed by the county board in road districts in counties not under township organization, by the highway board of trustees in consolidated township road districts, and by the township board in districts composed of a single township. 605 ILCS 5/6-207. Before any such per diem is paid, a sworn statement must be filed by such highway commissioner in the office of the road district clerk, showing the number of days he or she was employed and the kind of employment and giving the dates thereof.

The county board and township board may, in lieu of a per diem, fix an annual salary for the highway commissioner at not less than $3,000 to be paid in equal monthly installments. The boards must fix the compensation of the commissioner, whether an annual salary or a per diem, 180 days prior to the term of office of the commissioner. A portion not to exceed 50% of a highway commissioner's annual salary may be paid from the corporate road and bridge fund or the permanent road fund, if approved by the township board and the highway commissioner. 605 ILCS 5/6-207.

If the term of any highway commissioner is extended by operation of law, the board that fixes his or her rate of compensation may increase the rate of such compensation, within the limits provided in this Section, in

relation to that portion of his or her term that extends beyond the period for which he or she was elected.

The township board must order payment of the amount of per diem claimed in the statement above at the first regular meeting following the filing of such statement. In consolidated township road districts, the compensation and the expenses of the offices of the highway commissioner, road district clerk, and district treasurer must be audited by the highway board of trustees.

The compensation of the highway commissioner is paid from the general township fund in districts comprised of a single township and is paid from the regular road fund in all other districts having highway commissioners; however, in districts comprised of a single township, a portion (not exceeding 50%) of the highway commissioner's salary may be paid from the corporate road and bridge fund or the permanent road fund if approved by the township board and the highway commissioner. 605 ILCS 5/6-207.

B. Road District Clerk

In road districts comprised of a single township, the township clerk is the ex officio clerk for the highway commissioner. In each consolidated township road district, the road district clerk is selected by the highway board of auditors of the district from its membership. In other road districts, a road district clerk is elected, except as provided for in the highway code for county unit road districts and for municipalities that have created a road district. 605 ILCS 5/6-113.

1. Duties

a. Custody of Records

The road district clerk must have the custody of all records, books, and papers of the road district, and he or she must duly file all certificates or oaths and other papers required by law to be filed in his or her office. The clerk is authorized to administer oaths and take affidavits in all cases required by law to be administered by district officers. 605 ILCS 5/6-202.1.

b. Recording Orders of Highway Commissioner

The road district clerk must record in the book of records of his or her district all orders and directions of the highway commissioner required

by law to be kept, which must be deemed public records and must at all times be open to inspection without fee or reward. The clerk must also meet with the highway commissioner whenever requested at any reasonable time to do so by the latter official. Copies of all papers duly filed in the office of the road district clerk and transcripts from the district records certified to by him or her is evidence in all courts in like effect as if originals were produced. 605 ILCS 5/6-202.2.

c. Countersigning and Recording of Warrants of Highway Commissioner

The road district clerk must countersign and keep a complete record of all warrants issued by the highway commissioner. 605 ILCS 5/6-202.3.

d. Books and Stationery

The road district clerk must from time to time, as may be necessary, procure the proper books and stationery for his or her office. The cost thereof must be paid out of the district treasury. 605 ILCS 5/6-202.4.

e. Bids

The road district clerk of each road district must be responsible for placing the advertisement of bids and must be present when bids are opened. 605 ILCS 5/6-202.6.

f. Reporting District Elections

The road district clerk must report to the county superintendent of highways in writing all road district elections that may directly or indirectly affect him or her. The clerk must also mail or deliver to the county superintendent of highways such petitions as have been carried by any election relative to all construction or to the appointment, removal, or election of road district officials. 605 ILCS 5/6-202.5.

2. Records of District Clerk as Evidence in Court

The records of the road district clerk, stating that a dedication of a public highway has taken place according to statutory requirements, is prima facie evidence in all cases that a dedication of a public highway occurred that complied with all statutory requirements, regardless of whether supporting documentation or records are available. 605 ILCS 5/6-315.

3. Compensation

The road district clerk must receive either a per diem for each day he or she is necessarily employed in the discharge of official duties, which is fixed by the county board in road districts in counties not under township organization, or by the highway board of trustees in consolidated township road districts, or $4 per day for each day he or she is required to meet with the highway commissioner and the same amount per day for the time he or she is employed in canvassing the returns of elections. He or she receives no other per diem. In addition to the above, he or she also receives fees for the following services, to be paid out of the district road fund, except where otherwise specified:

1. For serving notice of election or appointment upon district officers as required, 25 cents each;

2. For posting up notices required by law, 25 cents each;

3. For copying any record in his or her office and certifying to the same, 10 cents for every 100 words to be paid by the person applying for the same. 605 ILCS 5/6-207(c).

The officers composing the highway board of trustees in consolidated township road districts are entitled to $3 per day for attending meetings of such board, to be paid out of the township fund of their respective townships. In such consolidated township road districts, the compensation of the road district clerk and the district treasurer is paid out of the road fund of such district. 605 ILCS 5/6-207(b).

C. Road District Treasurer

In each road district comprised of a single township, the supervisor of such township is ex officio treasurer for the road district. In each consolidated township road district, the treasurer is selected by the highway board of auditors of such district from its membership. In each other road district, the road district clerk is ex officio treasurer for the road district, except as is provided in this code for county unit road districts and for municipalities that are created a road district. 605 ILCS 5/6-114.

1. Treasurer's Bond

Each such road district treasurer, before becoming entitled to act as treasurer and within 10 days after his or her election or selection, shall execute a bond in double the amount of monies likely to come into his or

her hands by virtue of such office, if individuals act as sureties on such bond, or in the amount only of such monies if a surety company authorized to do business in this State acts as surety on such bond, conditioned that he or she will faithfully discharge his or her duties as such treasurer, that he or she will honestly and faithfully account for and pay over, upon the proper orders, all monies coming into his or her hands as treasurer, and the balance, if any, to his or her successor in office. Such bond shall be payable to the district and must be in such sum as the highway commissioner shall determine. Such bond must be approved by the highway commissioner and filed in the office of the county clerk with such approval endorsed thereon. The highway commissioner has the power to require the giving of additional bond, to increase or decrease the amount of such bond, or require the giving of a new bond whenever in his or her opinion such action is desirable. The highway commissioner has power to bring suit upon such bond for any loss or damage accruing to the district by reason of any nonperformance of duty or defalcation on the part of the treasurer. 605 ILCS 5/6-114.

2. Duties of District Treasurer

The road district treasurer must receive and have charge of all monies raised in the district for the support and maintenance of roads therein and for road damages, except such portions of the monies which by Section 605 ILCS 5/6-507 are directed to be paid to municipalities. He or she must hold such monies at all times subject to the order of the highway commissioner and must pay them over upon the order of the commissioner, such order to be countersigned by the township or district clerk. In counties under township organization, such monies, other than Social Security taxes required by the Social Security Enabling Act and wages that are subject to the Illinois Wage Payment and Collection Act, cannot be paid over until the board of township trustees or highway board of auditors, as the case may be, have examined and audited the claims or charges for which such order is drawn. The district treasurer must keep an account in a book provided by the commissioner of all monies received and all monies paid out, showing in detail to whom and on what account the same is so paid. 605 ILCS 5/6-205.

The road district treasurer must also present annually to the highway commissioner, within 30 days after the end of the fiscal year of the district, an itemized statement of receipts and disbursements of the road district during the fiscal year just ended, which must be sworn to. 605 ILCS 5/6-205.

3. Compensation

Except as otherwise provided, the road district treasurer must, in addition to any other compensation to which he or she is by law entitled, receive an annual salary of not less than $100 nor more than $1,000 per year to be fixed by the highway board of trustees in consolidated township road districts and by the board of township trustees in districts composed of a single township. 605 ILCS 5/6-207(d). In road districts in counties not under township organization, the district treasurer shall, in addition to any other compensation to which he or she is by law entitled, receive an annual salary deemed appropriate and to be fixed by the county board. The compensation of the district treasurer shall be paid from the general township fund in districts composed of a single township and shall be paid from the regular road fund in all other districts having district treasurers. 605 ILCS 5/6-207(d).

D. Road District Attorney

Generally, the township attorney serves as the road district attorney. However, the highway commissioner may be represented, generally, by a different attorney in non-conflict situations if the township board approves of it. 60 ILCS 1/100-5(c). In the event of a conflict with the highway commissioner and the township, however, the highway commissioner has the ability to hire counsel without board approval and to have that attorney paid out of the road fund. Section 201.19 of the Illinois Highway Code specifies that highway commissioners “have authority to hire legal counsel to perform legal functions for road districts where performance of such functions by the public official who would otherwise represent the highway commissioner would present a direct or potential conflict of interest.” 605 ILCS 5/6-201.19. A township cannot prevent a highway commissioner from hiring an independent attorney when the road district has a conflict with the township by refusing to put funds for legal fees in the road district’s budget. Newport Twp. Rd. Dist. v. Pavelich, 2012 IL App (2d) 111317.

E. Employees

1. Personnel Policies

Every highway commissioner with five or more employees in a county under township organization must set and adopt rules concerning all benefits available to employees of that office. The rules must include without limitation the following benefits to the extent they are applicable: insurance coverage, compensation, overtime pay, compensatory time off,

holidays, vacations, sick leave, and maternity leave. The rules must be adopted and filed with the township clerk within four months after the highway commissioner takes office. The highway commissioner of a consolidated township road district shall file the rules with the clerk of each township contained within the consolidated district. Amendments to the rules are to be filed with the appropriate township clerk on or before their effective date. 605 ILCS 5/6-201.20.

2. CDL – Random Drug and Alcohol Testing Requirements

All operators of vehicles employed by townships or road districts required to hold a Commercial Drivers License (CDL), including full- and part-time employees and elected officials, are subject to random drug and alcohol testing by approved substance abuse professionals. Failure to be enrolled in a CDL Random Drug and Alcohol Program is a violation of federal law and subject to a $10,000 fine.

An employee of a township or road district with a population of less than 3,000 operating a vehicle within the boundaries of the township or road district for the purpose of removing snow or ice from a roadway by plowing, sanding, or salting is waived from the requirements of this Section when the employee is needed to operate the vehicle because the employee of the township or road district who ordinarily operates the vehicle and who has a commercial driver's license is unable to operate the vehicle or is in need of additional assistance due to a snow emergency. 625 ILCS 5/6-507(c-5).

The Township Officials of Illinois administer a drug and alcohol testing program for its membership. If you are interested in participating in or learning more about the program, call the TOI office at (866) 897-4688 or visit https://www.toi.org/toi-drug-program.

3. Smoke Free Illinois

Pursuant to the Smoke Free Illinois Act, smoking is prohibited in all public places and places of employment, which includes all township and township highway buildings. Also, no smoking is permitted within a minimum distance of 15 feet from entrances and exits of such township buildings. Additionally, the Act prohibits smoking in all government vehicles, including those vehicles owned, leased, or operated by the township road district. 410 ILCS 82/15.

4. Additional Considerations

Please refer to Chapter VII for additional road district employment considerations.

F. Finances/Budgets

The highway commissioner is given the responsibility to submit a budget to the township board for approval. 605 ILCS 5/6-501. The Highway Code requires that the "township board of trustees…at the public hearing shall adopt the tentative budget and appropriation ordinance, or any part as the board of trustees deem necessary." 605 ILCS 5/6-501(c). There has been a long-standing, ongoing debate regarding to what extent the township board can reduce the budget presented by the highway commissioner. As a general principal, the township board has limited discretion over the road district's budget. The township board may, for example, find that a certain line item is unnecessary. The township board and highway commissioner may agree to reduce a budget line item. However, the township board does not appear to have any legal authority to significantly reduce line items within a road district budget without the approval of the highway commissioner. See Amarantos v. Bd. of Trs. of Northfield Twp., No. 10 CH 38281 (Cir. Ct. Cook County). Although a township board may accept a highway commissioner's proposed budget, reject it, or accept parts of it while rejecting other parts pursuant to 605 ILCS 5/6-501(c), a township board is not authorized to unilaterally make modifications (e.g., reductions or additions) to the proposed budget by adjusting individual line items in a proposed budget. *Cunningham v. Brighton Township*, 2020 IL App (4th) 190897-U, ¶ 23, 26.A township board also cannot refuse to pass a road district budget entirely or bar a highway commissioner from putting funds in the road district's budget for legal fees for disputes that the road district may have with the township. See Newport Twp. Rd. Dist. v. Pavelich, 2012 IL App (2d) 111317. For a detailed discussion of the Road District Budget and Appropriation Ordinance and tax levies, refer to Chapter IX. A variety of other Road District financial issues follow.

1. Expenditures of Road Monies – Warrants

The highway commissioner directs the expenditure of all monies collected in the district for road purposes and draws warrants on the district treasurer as long as the warrants are countersigned by the district clerk. 605 ILCS 5/6-201.6.

2. Deposit of Road Funds in Custody of Supervisor or Treasurer

In counties under township organization, the board of township trustees of the various townships must from time to time, when requested by the supervisor of their respective townships, designate one or more banks or savings and loan associations in which the road funds of the road district in the custody of the district treasurer may be kept, except that in consolidated township road districts such depository must be designated by the highway board of trustees upon request of the treasurer of the respective consolidated township road district.

In counties not under township organization, the county board must from time to time, when requested by the treasurer of any road district, designate one or more banks or savings and loan associations in which the road funds of the various road districts in such county may be kept.

When a bank or savings and loan association has been designated as a depository, it shall continue as such until 10 days have elapsed after the new depository is designated and has qualified by furnishing the statements of resources and liabilities as is required in this Section. When a new depository is designated, the board of township trustees, highway board of trustees or county board, as the case may be, must notify in writing the sureties of the district treasurer of that fact, at least five days before the transfer of funds. The district treasurer is discharged from responsibility for all monies of the road fund that he or she deposits in a depository so designated while such monies are so deposited.

No bank or savings and loan association can receive public funds unless it has complied with the requirements established pursuant to Section 6 of “An Act relating to certain investments of public funds by public agencies.” 605 ILCS 5/6-206.

3. General Tax for Roads and Bridges

A road district has the authority to levy taxes for general road purposes. 605 ILCS 5/6-501(c). For single township road districts, the rate may not exceed 0.125% of the EAV of the road district or the rate in effect on July 1, 1967, whichever is greater. The rate may be increased by the township board to a rate not to exceed 0.165% of the road district EAV, and once this maximum is in place, it remains in effect until the township authorizes its change. For consolidated township road districts,

the rate may not exceed 0.175% of the EAV of the road district or the rate in effect on July 1, 1967, whichever is greater. 605 ILCS 5/6-501(c).

Increasing this rate requires a petition of at least 10% of the legal voters in the road district (other than a county unit road district). Upon such petition, the clerk shall order a referendum on the proposition to increase the district's rate limitation. The referendum must be held at the next annual town meeting, special town meeting called for that purpose, or election in accordance with general election law. 605 ILCS 5/6-504, 5/6-505, 5/6-506. In any event, rate increases may not exceed 0.66% of the EAV of the road district, and for a road district with an EAV of less than $10,000,000, the increase may not exceed 0.94% of the EAV for that district. 605 ILCS 5/6-506.

One-half of the tax generated by the Road and Bridge Fund levy on the property lying within a municipality in which the streets and alleys are under the care of the municipality must be paid over to the treasurer of the municipality, to be appropriated to the improvement of roads or streets, either within or without the municipality and within the road district under the direction of the corporate authorities of the municipality. However, when any of the tax is expended beyond the limits of the municipality, it shall be with the consent of the highway commissioner. If any municipality has not appropriated the taxes received for the improvement of roads or streets within one year from the date of the receipt thereof, then the unappropriated portion of such taxes shall be paid by the municipal treasurer to the road district treasurer to be used for road purposes within the road district. 605 ILCS 5/6-507.

Refer to Chapter IX on Township Finances for additional information pertaining to road district levies.

4. Tax for Construction of Bridges at Joint Expense of County and Road District and Obtaining Aid From County

When constructing or repairing any bridge, culvert, drainage structure or grade separation, including approaches thereto, is necessary on, across, or along any public road in any road district in the county, or on any street in any municipality of less than 15,000 population in the county, or on or across a line that forms the common boundary line between any such road districts or such municipalities, in which work the road district, or such municipality is wholly or in part responsible, and the cost of which work will be more than .02% of the value of all the taxable property in such road district or municipality, as equalized or assessed by

the Department of Revenue, and the tax rate for road purposes in such road district was in each year for the two years last past not less than the maximum allowable, or the tax rate in such municipalities for corporate purposes was in each year for the two years last past for the full amount allowed by law to be extended therein for such corporate purposes, the highway commissioner, the city council or the village board of trustees, as the case may be, may petition the county board for aid, and if the foregoing facts shall appear, the county board must appropriate from the "county bridge fund" in the county treasury a sufficient sum to meet one-half the expense of constructing or repairing such bridge, culvert, drainage structure or grade separation, including approaches thereto, on condition that the road district or municipality asking for aid must furnish the other one-half of the required amount. If, however, the road district has increased its tax rate for such purposes to a rate in excess of .05% but not exceeding .25%, the amount required to be appropriated by the county must be in accordance with the provisions of Section 605 ILCS 5/5-501, to the extent that the county and township rates are identical. The maximum allowable tax rate for the two years last past shall be determined by using the last certified equalized assessed valuation at the time the tax levy ordinance was adopted.

When the county board determines to grant the prayer of the highway commissioner, city council or village board of trustees asking for aid for the construction or repair of such bridge, culvert, drainage structure or grade separation, including approaches thereto, the county board must thereupon enter an order directing the county superintendent of highways to cause plans and specifications for such improvement to be prepared.

Thereupon the county board must order the improvement made, either by the letting of a contract in the manner authorized by the county board or by doing the work itself through its officers, agents and employees. The work must be performed under the general supervision of the county superintendent of highways, and when the work has been satisfactorily completed to meet the approval of the county superintendent of highways, he or she must so certify to the county board with a certificate including an itemized account of the cost of all items of work incurred in the making of such improvement, and must show the division of cost between the county and the participating agency, and he or she must cause a copy of such certificate to be filed with the clerk of the participating agency. The county board and the participating agency undertaking such work must thereupon make final payment for the same. 605 ILCS 5/5-501.

For the purpose of constructing or repairing bridges, culverts, drainage structures or grade separations, including approaches thereto, at the joint expense of a county and a road district and obtaining aid from the county as provided in Section 5-501 of this Code, included in the annual tax levies may be a tax of not to exceed .05% of the value of all the taxable property in the road district, as equalized or assessed by the Department of Revenue, which tax must be in addition to and may be in excess of the maximum levy and may be extended at a rate in addition to and in excess of the tax rate for road purposes.

Such tax, when collected, must constitute a separate fund of the road district, held by the treasurer to be expended for the construction or repair of bridges, culverts, drainage structures, or grade separations, including approaches thereto, at the joint expense of the county and the road district. The highway commissioner must separately specify in the certificate the amount necessary to be raised by taxation for the purpose of constructing or repairing bridges, culverts, drainage structures, or grade separations, including approaches thereto, at the joint expense of the county and the road district. Upon the approval by the county board of the amount so certified, the county clerk shall extend the same against the taxable property of the road district, provided the amount thus approved must not be extended at a rate in excess of .05% of value, as equalized or assessed by the Department of Revenue.

When any improvement project for which a tax may be levied has been ordered and the estimated cost of such project to the road district is in excess of the amount that will be realized from the annual tax levy authorized by this Section when extended and collected, the road district may accumulate the proceeds of such tax for such number of years as may be necessary to acquire the funds necessary to pay the road district's share of the cost of such project. 605 ILCS 5/6-508.

5. Exception to Property Tax Extension Limitation Law

In counties in which a property tax extension limitation is imposed under the Property Tax Extension Limitation Law and the imposition of the property tax extension limitation prevents a road district from levying taxes for road purposes at the required rate, a road district may retain its eligibility if, at the time the property tax extension limitation was imposed, the road district was levying at the required rate and continues to levy the maximum allowable amount after the imposition of the property tax extension limitation. 605 ILCS 5/6-508.

It shall not be a valid objection to any subsequent tax levy made under this Section that unexpended money arising from a preceding levy of a prior year remains because of the accumulation provided for in this Section. 605 ILCS 5/6-508. The rate limitation imposed by this Section may be increased for a ten-year period to up to 0.25% of the value of all the taxable property in the road district, as equalized or assessed by the Department of Revenue if the proposition for the increased tax rate is submitted and receives a majority of all ballots cast on the proposition at the election held under 605 ILCS 5/6-505.

All surplus funds remaining in the hands of the treasurer of the road district after the completion of any construction or repairing of bridges, culverts, drainage structures, or grade separations, including approaches thereto, under this Section, must be turned over at the request of the highway commissioner to the regular road fund of the road district. Upon such request, no further levy is to be extended by the county clerk unless the proposition authorizing such further levy is submitted and receives a majority of all ballots cast on the proposition at the election. 605 ILCS 5/6-508.

6. Equipment and Building Tax

For the purpose of acquiring machinery and equipment or for the purpose of acquiring, constructing, or reconstructing buildings for housing machinery and equipment used in the construction, repair, and maintenance of township or district roads, or for both such purposes, the township board of trustees or highway board of auditors, as the case may be, or the highway commissioner in a county not under township organization, after a favorable vote as provided in this Section, may levy an annual tax of not to exceed .035% of the value of all the taxable property in the road district, as equalized or assessed by the Department of Revenue, which tax must be in addition to and in excess of all other taxes and tax rates that may be levied or extended for road purposes in a road district under any other Section of this Code. Any tax levy authorized pursuant to this Section must be certified to and extended by the county clerk as a separate tax to be known as the “equipment and building tax” of the road district but must not be extended at a rate in excess of .035% of the value of the taxable property of the district, as equalized or assessed by the Department of Revenue. In any county not under township organization, however, the amount of any such levy must first be approved by the county board before such certification and extension.

Such tax, when collected, constitutes a separate fund of the road district to be held by the treasurer of the road district known as the "Equipment and Building Fund" and must be expended only for the purpose or purposes for which it was levied. Whenever any road district first levies the tax, the ordinance or resolution levying the tax must be published in one or more newspapers published in the district within 10 days after the levy is made. If no newspaper is published in the district, the ordinance or resolution must be published in a newspaper having general circulation within the district. The publication of the ordinance or resolution must include a notice of (1) the specific number of voters required to sign a petition requesting that the question of the adoption of the tax levy be submitted to the voters of the district; (2) the time within which the petition must be filed; and (3) the date of the prospective referendum. The road district clerk or secretary must provide a petition form to any individual requesting one.

On petition of 25 or more legal voters of the road district to the district clerk, the clerk must order a referendum on the question of authorizing the levy and extension of an annual tax provided for in this Section at the next annual township meeting or at an election in accordance with the general election law. If the referendum is ordered to be held at the township meeting, the district clerk must give notice that at the next annual town meeting the proposition shall be voted upon. Such notice must set forth the proposition and must be given by publication in a newspaper of general circulation in the township and by posting notices in at least 10 of the most public places in township at least 10 days prior to the annual meeting. If the referendum is ordered to be held at an election, the road district clerk must certify that proposition to the proper election officials, who must submit the proposition in accordance with the general election law. If a majority of the votes cast on the question is in favor of such tax, then the township board of trustees or highway board of auditors, as the case may be, or the highway commissioner in a county not under township organization may levy an annual tax under the provisions of this Section. 605 ILCS 5/6-508.1.

7. Road Maintenance Tax - Permanent Road (Oil) Tax

On petition of 25 or more legal voters of the road district to the road district clerk, the clerk shall order a referendum on the proposition for or against an annual tax, not to exceed .167% of the value of taxable property of the district, for the purpose of constructing or maintaining hard roads or for improving or maintaining earth roads. This petition must state the location and route of the proposed road(s) and must also state the percent

rate not to exceed .167%. The referendum must be held at the next annual town meeting, at a special town meeting called for that purpose, or at an election in accordance with election law. If the referendum is ordered to be held at the annual town meeting or a special town meeting, the road district clerk must give notice that at the next annual or special town meeting, the proposition shall be voted upon. Such notice must set forth the proposition and must be given by publication in a newspaper of general circulation in the township and by posting notices in at least 10 of the most public places in township at least 10 days prior to the annual or special meeting. If the referendum is ordered to be held at an election, the district clerk must certify that proposition to the proper election officials, who must submit the proposition in accordance with the general election law. Finally, if authorized at a referendum held in accordance with general election law, the rate limit of .167% may be increased to .25% of the value of taxable property. 605 ILCS 5/6-601.

8. Borrowing Money

Road districts may borrow money from any bank or other financial institution or, in a township road district, and with the approval of the township board of trustees, from the township fund, provided such money shall be repaid within ten years from the time the money is borrowed. "Financial institution" means any bank subject to the "Illinois Banking Act," any savings and loan association subject to the "Illinois Savings and Loan Act of 1985," and any federally chartered commercial bank or savings and loan association organized and operated in this State pursuant to the laws of the United States. 605 ILCS 5/6-107.1.

9. Commissioners Turning Over Monies to Municipalities

The highway commissioner of any road district may turn over to any municipality lying wholly within its limits money from the regular road taxes to be used by such municipality within its corporate limits in the construction, including the separation of grades, of State or county highways and municipal streets, provided the consent of the Department is first obtained before such money can be turned over to municipalities by such highway commissioner. 605 ILCS 5/6-511.

10. Bonds for Road Purposes

On the petition either of the highway commissioner or of 25 of the legal voters of any district to engage in road improvements to the district clerk, the road district clerk may order a referendum on the proposition at the next annual town meeting or at an election in accordance with the

general election law. If the referendum is ordered to be held at the town meeting or special town meeting, the road district clerk must give notice that at the next annual town meeting or at a special town meeting called for that purpose, the proposition will be voted upon. Such notice sets forth the proposition and is to be given by publication in a newspaper of general circulation in the township and by posting notices in at least 10 of the most public places in the township at least 10 days prior to the annual meeting or special meeting. If the referendum is ordered to be held at an election, the road district clerk certifies that proposition to the proper election officials, who submit the proposition to the voters in accordance with the general election law.

If a majority of the legal voters voted in favor of such question, the highway commissioner and the road district clerk issue (from time to time as the work progresses) a sufficient amount of bonds of such district for the purpose of constructing or repairing roads, bridges, or any other work incident to the construction thereof, according to the prayer of such petition, if set out therein.

Such bonds are of such denominations, bear such date, maturity, rate of interest, not exceeding 8% per annum payable annually or semiannually, and be payable at such place as the highway commissioner and road district clerk determine and be disposed of as the necessities and convenience of such district may require, provided that such bonds cannot be sold nor disposed of, either by sale or by payment to contractors for labor or materials, for less than their par value, and that such bonds must be issued in not more than 10 annual series, the first series of which must mature not more than five years from the date thereof, and each succeeding series in succeeding years thereafter. Such bonds may be lithographed and the interest for each year evidenced by interest coupons thereto attached, which coupons must be signed with original or facsimile signatures by the same officers who executed the bonds.

A register of all issues of such bonds must be kept in the office of the county clerk of the county in which such road district is located, showing the date, amount, rate of interest, maturity, and the purpose for which such bonds were issued, to be furnished in writing to the county clerk by the road district clerk. Such county clerk must extend annually against the taxable property in such road district a tax sufficient to pay the interest on such bonds in each year prior to the maturity of such first series; thereafter, he or she must extend a tax in each year sufficient to pay each series as it matures, together with interest thereon and with the interest upon the unmatured bonds outstanding, provided that, if it has been

certified to the county clerk that funds from other sources have been allocated and set aside for the purpose of paying the principal or interest, or both, of such bonds, the county clerk must, in extending the tax and fixing the rate of tax, make proper allowance and reduction in such extension of tax and tax rate to the extent of the funds so certified to be available for the payment of such principal or interest, or both. 605 ILCS 5/6-510.

11. Damages for Laying Out Road – Tax Levy

When damages have been agreed upon, allowed, or awarded for laying out, widening, altering, or vacating township or district roads or for payments for right-of-way in aiding the State in connection with the construction of State highways or in connection with the construction of federal aid roads or such roads as are constructed with the aid of federal grants or loans, or for ditching to drain township or district roads, the amounts of such damages and interest on orders issued in payment of such damages must be included in the next succeeding tax levy and may be in addition to and in excess of the maximum levy and rate of extension of taxes for road purposes authorized under Section 605 ILCS 5/6-501 and, when collected, shall constitute and be held by the treasurer of the road district as a separate fund to be paid to the parties entitled thereto. The highway commissioner, or the township board of trustees, or highway board of auditors, as the case may be, at the time of certifying the general tax levy for road purposes within that district, must include and separately specify in such certificate the amount necessary to be raised by taxation for the purpose of paying such damages. Upon the approval by the county board of the amount so certified, the county clerk must extend the same against the taxable property of such road district, provided the amount must not be extended at a rate in excess of .033% of value, as equalized or assessed by the Department of Revenue. The foregoing limitations upon tax rates may be increased or decreased under the referendum provisions of the General Revenue Law of Illinois. 605 ILCS 5/6-503.

12. Damages – Anticipatory Orders

Whenever damages have been allowed for roads or ditches, the highway commissioner may draw orders on the road district treasurer, payable only out of the tax to be levied for such roads or ditches, when the money shall be collected or received, which orders must bear interest at the rate of 6% per annum from the date on which they are issued and may be disposed of by the highway commissioner in anticipation of the tax to

be levied to pay the same, provided that such orders shall not be disposed of at a discount.

The highway commissioner, as soon as the tax levied for the payment of such orders is collected, must notify the holder or holders thereof to offer same for payment, and such orders must cease to draw any interest from and after the time that any holder thereof is notified that funds available for the payment of same is in the hands of the road district treasurer. 605 ILCS 5/6-509.

13. Surplus Fund Disposition

All surplus funds remaining in the hands of the treasurer of the road district after the completion of the construction of any road must be turned over to the regular road fund of such road district, except such amount as the highway commissioner may order retained for the purpose of repairing such permanent road. 605 ILCS 5/6-616.

14. Special Service Areas

Townships in Cook County may fund and provide special services for its streets, street lighting, sidewalks, sewer and water systems, alleys, and other necessary adjuncts by establishing a special service area. 60 ILCS 1/207-1, *et seq*.

15. List of Warrants To County Superintendent of Highways

The highway commissioner must furnish a list of warrants showing where money is spent, for what purpose, and the amount expended. The list must be given to the county superintendent of highways within 30 days after issuing warrants. 605 ILCS 5/6-201.13.

16. MFT Report From County

If requested by the treasurer of a road district in the county, the county superintendent of highways must report to the treasurer the balance, on the last day of each 6-month period ending on May 1 and November 1, of the road district’s monies administered by the county superintendent of highways. The report must be made within 30 days after the end of each 6-month period. This section applies only to counties with a population less than 3 million. 605 ILCS 5/5-205.9. For further information pertaining to qualifications for MFT funds and the uses for the funds, contact TOI or your township attorney for clarification.

G. Liability Insurance

The highway commissioner is authorized to contract for insurance against any loss or liability of any officer, employee, or agent of the district resulting from the wrongful or negligent act of any such officer, employee, or agent while discharging and engaged in his or her duties and functions and acting within the scope of his or her duties and functions as an officer, employee, or agent of the road district. Such insurance must be carried with a company authorized by the Department of Insurance to write such coverage in Illinois. Every such policy must provide or be endorsed to provide that the company issuing such policy waives any right to refuse payment or deny coverage or liability thereunder, within the limits of the policy, because of any exemption the district may have from such liability. The expenditure of road funds of the district to purchase such insurance contracts constitutes a road purpose under this Act. 605 ILCS 5/6-412.1.

H. Other Road District Powers and Duties

1. Corporate Powers

Road districts have corporate capacity to exercise the powers granted to them and those powers necessarily implied. 605 ILCS 5/6-107. This includes the power 1) to sue and be sued; 2) to acquire by purchase, gift or legacy, and to hold property, both real and personal, for the use of its inhabitants and again to sell and convey the same; and 3) to make all such contracts as may be necessary in the exercise of the powers of the district.

2. Property Disposition

A road district may sell surplus real estate owned by the district. In road districts in counties under township organization, at an annual or special town meeting the electors of the road district by resolution may authorize the sale of surplus public real estate owned by the road district. The value of the real estate must be determined by a written MAI certified appraisal or by a written certified appraisal of a State certified or licensed real estate appraiser. The appraisal must be available for public inspection. The resolution may direct the sale to be conducted by the highway commissioner or a person designated by the highway commissioner or by listing the real estate with local licensed real estate agencies (in which case the terms of the agent's compensation shall be included in the resolution). The resolution must be published at the first opportunity following passage in a newspaper published in the road district or, if there is none, then in a newspaper published in the county in which the road

district is located. The resolution must also contain pertinent information concerning the size, use, and zoning of the real estate and the terms of sale. The highway commissioner may accept any contract proposal he or she determines to be in the best interest of the township, but in no event shall the real estate be sold at a price less than 80% of its appraised value. 605 ILCS 5/6-803.1(a).

In road districts in counties not under township organization, the highway commissioner may sell surplus public real estate owned by the road district. The value of the real estate shall be determined by a written MAI certified appraisal or by a written certified appraisal of a State certified or licensed real estate appraiser. The appraisal shall be available for public inspection. The sale may be conducted by the highway commissioner or a person designated by the highway commissioner or by listing the real estate with local licensed real estate agencies. A notice of the highway commissioner's intent to sell the real estate shall be published at the first opportunity in a newspaper published in the road district or, if none, then in a newspaper published in the county in which the road district is located. The notice shall also contain pertinent information concerning the size, use, and zoning of the real estate and the terms of sale (including the terms of the real estate agent's compensation, if applicable). The highway commissioner may accept any contract proposal determined to be in the best interest of the road district, but in no event shall the real estate be sold at a price less than 80% of its appraised value. 605 ILCS 5/6-803.1(b).

3. Acquisition of Real Property

Township road districts may acquire the fee simple title or lesser interest the district desires to any land, rights, or other property incidental to road district purposes by purchase or gift or, if the compensation or damages cannot be agreed upon, by the exercise of the right of eminent domain under the eminent domain law of this state. 605 ILCS 5/6-805.

4. Contracts for Public Transportation

The highway commissioner of each road district within the territory of the Regional Transportation Authority must have authority, with the approval of the township board of trustees, to contract with the Regional Transportation Authority or a Service Board, as defined in the Regional Transportation Authority Act, for the purchase of public transportation services within the district, upon such terms and conditions as may be mutually agreed upon. The expenditure of road funds collected under a

road district tax to purchase public transportation services constitutes a road purpose under this Code. 605 ILCS 5/6-411.5. A road district may use money in its district road fund to pay for all or part of the direct costs of senior citizen transportation programs or senior citizen mass transit programs or both. 605 ILCS 5/6-131.

5. Temporary Road Closings

Existing township and district roads may be temporarily closed and reconstructed by the filing with the highway commissioner of the district involved and with the county superintendent of highways of a petition signed by all of the owners of the property contiguous to both sides of that portion of the roadway to be temporarily closed and reconstructed by the petitioners. A copy of this petition shall be published in at least one newspaper published in the township or district or, in the absence of such published newspaper, in at least one newspaper of general circulation in the township or district or, in the absence of such generally circulated newspaper, by posting copies of the petition in five of the most public places in the district in the vicinity of the road to be temporarily closed and reconstructed. The highway commissioner must provide for publication or posting at least 10 days prior to any decision on the matter. If the commissioner is of the opinion that the temporary road closing is in the public and economic interest and that the temporary closing will not materially interfere with the flow of traffic on the township and county road system then, upon the approval of plans for the reconstruction of the road by the district highway commissioner and the county superintendent of highways and the depositing with the commissioner of a contract and corporate surety bond approved by the Highway Commissioner and the County Superintendent of Highways properly guaranteeing the replacement of the road in as good or better condition as existed prior to the closing, the commissioner may temporarily close the road for a period not to exceed three years. 605 ILCS 5/6-326.1.

6. Building of Sidewalks in Unincorporated Communities

The highway commissioner has the authority to build curbs, sidewalks, alleys, and bike paths in unincorporated communities, using any funds belonging to the road district in which such community is located. 605 ILCS 5/6-201.14. The township board of a township in a county with a population between 300,000 and 3,000,000 may provide for the construction or installation and repair of sidewalks or street lighting or traffic control devices in the township along or upon any roads by special taxation. 60 ILCS 1/235-15.

7. Disaster Relief Services

The Highway Commissioner, with elector approval, has authority to provide necessary relief services following the occurrence of an event that has been declared a disaster by state or local officials. 605 ILCS 5/6-201.21.

8. Clearing Leaves and Brush

The Highway Commissioner, with elector approval, has authority to provide for orderly collection, transport, and disposal of brush and leaves that have been properly placed for collection along the road district rights of way in accordance with township or county guidelines in those townships and counties that regulate burning of leaves or brush. The Highway Commissioner may use funds authorized under Section 30-117 of the Township Code to provide for such action. 605 ILCS 5/6-201.21.

9. Recycling Programs

The Illinois Highway Code was amended in 2007 to permit township road districts to organize, administer, or participate in one or more recycling programs. 605 ILCS 5/6-132. At the same time, the Township Code was also amended to provide authority for townships to adopt rules for recycling programs in unincorporated areas, which was further amended effective in 2008 to give townships the authority to actually administer a recycling program. 60 ILCS 1/85-13(f).

10. Reporting Class II and III Streets to the Illinois DOT

Section 15-116 of the Illinois Vehicle Code requires that local agencies report to the Illinois Department of Transportation (DOT) all streets and highways under their jurisdiction designated "Class II" and "Class III" roads under the definitions in 625 ILCS 5/1-126.1. Local agencies are also responsible for providing reference contact names and telephone numbers to the DOT. 625 ILCS 5/15-116.

J. General Highway Provisions

1. Arterial Roads

All township and district roads cannot be not less than 40 feet in width, except as provided in Section 605 ILCS 5/6-327. Highway commissioners in single township road districts may annually determine that certain roads in the district are vital to the general benefit of the

district and designate them all or in part as arterial district roads. The designation must be approved by the county superintendent of highways, after notice and hearing, prior to the commissioners' recording the roads with the county superintendent of highways. No road or portion thereof designated as arterial may be closed or vacated without written approval of the county despite the road's inclusion in any annexation or incorporation proceedings provided for in the Illinois Municipal Code. This paragraph does not apply to roads in home rule units of government nor to roads included in any annexation proceeding by home rule units of governments. 605 ILCS 5/6-301.

2. Petition for Road Improvement

On the petition of 25 legal voters of any road district to the road district clerk, he or she must order a referendum on the proposition for or against an annual tax not to exceed .167% of the value of the taxable property, as equalized or assessed by the Department of Revenue, for the purpose of constructing or maintaining gravel, rock, macadam, or other hard roads or for improving, maintaining, or repairing earth roads by draining, grading, oil treating or dragging. Such petition must state the location and route of the proposed road or roads, and must also state the annual rate per cent not exceeding .167% of the value, as equalized or assessed by the Department of Revenue. The referendum must be held at the next annual town meeting, at a special town meeting called for that purpose, or at an election in accordance with the general election law. If the referendum is ordered to be held at the township meeting, the road district clerk must give notice that at the next annual township meeting the proposition must be voted upon. Such notice must set forth the proposition and must be given by publication in a newspaper of general circulation in the township and by posting notices in at least 10 of the most public places in the township at least 10 days prior to the annual meeting. If the referendum is ordered to be held at an election, the road district clerk shall certify that proposition to the proper election officials, who shall submit the proposition in accordance with the general election law. 605 ILCS 5/6-601.

3. Traffic Control Devices Erection and Maintenance

Highway commissioners may (subject to the written approval of the county superintendent of highways) place, erect, and maintain on township or road district roads traffic control devices and signs authorized by this Code or by "The Illinois Vehicle Code." 605 ILCS 5/6-201.16.

4. Erection and Repair of Guide and Direction Signs

The highway commissioner must erect and repair at intersections of the most important public roads, guide and direction signs and any other traffic authorized signs. 605 ILCS 5/6-201.11. Further resources, including "The Signing of Road District and Township Highways" and "Manual on Uniform Traffic Control Devices (MUTCD)," are available from the Illinois Department of Transportation.

5. Road Lighting

The highway commissioner may provide for the lighting of any public road in his or her district when the commissioner believes lighting is necessary for the convenience or safety of the public. 605 ILCS 5/6-201.12.

6. All-Weather Surfaces at Mail Boxes

On all township or district roads that have all-weather travel surfaces, the highway commissioner, if funds are available, must construct and maintain adequate all-weather surfaces at boxes used for the receipt of United States mail. Such approaches must be constructed and maintained with the same material as the roadbed or other suitable all-weather material. The rules, regulations, and specifications adopted by the Department governing the erection and maintenance of boxes for the receipt of United States mail on State highways must not apply to and govern the erection and maintenance of such boxes on such township or district roads. 605 ILCS 5/6-412.

7. Corner Stones

In grading highways, corner stones marking sectional or other corners cannot be disturbed, except to lower such stones so that they will not rise above the surface of the highway. If a corner stone is covered to a depth greater than 12 inches or is covered with a highway surfacing material other than road oil, the location of the corner stone must be preserved by setting a suitable monument over the stone that is level with the highway surface or by setting at least three offset monuments in locations where they will not be disturbed. When any corner stone is lowered or when a monument is set over a stone or when offset monuments are set, it must be done in the presence of and under the supervision of a Registered Illinois Land Surveyor who must record the type and location of the reference monuments with respect to the corner

stone in the office of the recorder in the county in which such stone is located. 605 ILCS 5/9-104.

8. Entrance Culverts

In constructing a public highway, if a ditch is made at the junction of highways or at the entrance of gates or other openings of adjoining premises, the highway authorities must construct good and sufficient culverts or other convenient crossings. New entrance culverts or crossings or additions to existing entrance culverts or crossings along an existing public highway or street with a ditch may be made with the consent of the highway authorities, provided the applicant for such entrance culvert or crossing constructs at the applicant's expense a good and sufficient culvert or other convenient crossing of the type and size specified by the highway authorities, which structure must then become the property of the public. 605 ILCS 5/9-105.

9. Oiling of Highways; Protection of Intersecting Highways From Oil

Wherever a highway, driveway, parking lot or other area open to traffic that has been freshly treated with road oil, liquid asphalt, or similar material intersects with or is otherwise located or partially located within 300 feet of a durable all-weather highway of any type except gravel or crushed stone, the highway authorities or any person responsible for applying such material must cause such freshly treated highway, driveway, parking lot, or other such area to be barricaded or covered with crushed aggregate or other suitable cover material so that traffic will not carry the fresh road oil, liquid asphalt, or similar material onto the travel ways of the durable all-weather highway. 605 ILCS 5/9-106.

10. Tile Drains – Contract With Owners or Occupants of Adjoining Lands

Whenever the highway authorities are about to lay a tile drain along any public highway, the highway authorities may contract with the owners or occupants of adjoining lands to lay larger tile that would be necessary to drain the highway and permit connection therewith by such contracting parties to drain their lands. 605 ILCS 5/9-107.

11. Streams and Culverts – Removal of Driftwood and Other Accumulations

The highway authorities must from time to time inspect the bridges and culverts on the public highways and streets under their respective jurisdictions that span streams and watercourses and must remove driftwood and other materials accumulated with the right-of-way at such structures that obstruct the free flow of either low or high water. Any general funds and any forces and equipment available for maintenance of the public highways or streets may be used for the removal of such accumulated material. 605 ILCS 5/9-111.1.

12. Construction by Others on Township Roads

No ditches, drains, track, rails, poles, wires, pipe line, or other equipment of any public utility company, municipal corporation, or other public or private corporation, association or person can be located, placed or constructed upon, under or along any highway, or any township or district road, other than a highway or road within a municipality without first obtaining the written consent of the appropriate highway authority as hereinafter provided for in this Section. 605 ILCS 5/9-113.

13. Posting Signs for Weight Limitation when the Department or Local Authority May Restrict Right to Use Highways

Local authorities and road district highway commissioners, with respect to highways under their jurisdiction, may by ordinance or resolution prohibit the operation of vehicles upon any such highway or impose restrictions as to the weight of vehicles to be operated upon any such highway, for a total period of not to exceed 90 nonconsecutive days in any one calendar year, whenever any said highway by reason of deterioration, rain, snow, or other climate conditions will be seriously damaged or destroyed unless the use of vehicles thereon is prohibited or the permissible weights thereof reduced.

The local authority or road district highway commissioner enacting any such ordinance or resolution must erect or cause to be erected and maintained signs designating the provision of the ordinance or resolution at each end of that portion of any highway affected thereby, and the ordinance or resolution is not effective unless and until such signs are erected and maintained.

Local authorities and road district highway commissioners with respect to highways under their jurisdiction may also, by ordinance or resolution, prohibit the operation of trucks or other commercial vehicles or may impose limitations as the weight thereof, on designated highways, which prohibitions and limitations must be designated by appropriate signs placed on such highways. Certain weight provisions take precedence over other provisions. However, with respect to roads under their authority, highway commissioners may not permanently post a road or portion thereof at a reduced weight limit unless the decision to do so is made in accordance with Section 6-201.22 of the Illinois Highway Code. 625 ILCS 5/15-316(c-5).

An ordinance or resolution adopted by a township restricting highway access based upon weight under this Section does not apply to cargo tank vehicles with two or three permanent axles when delivering propane for emergency heating purposes if the cargo tank is loaded at no more than 50% capacity, the gross vehicle weight of the vehicle does not exceed 32,000 pounds, and the driver of the cargo tank vehicle notifies the appropriate agency or agencies with jurisdiction over the highway before driving the vehicle on the highway. The cargo tank vehicle must have an operating gauge on the cargo tank that indicates the amount of propane as a percent of capacity of the cargo tank. The cargo tank must have the capacity displayed on the cargo tank, or documentation of the capacity of the cargo tank must be available in the vehicle. However, this exception does not allow cargo tank vehicles to cross bridges with posted weight restrictions if the vehicle exceeds the posted weight limit. 625 ILCS 5/15-316.

14. Nuisances, Petty Offenses and Violations

a. Damage to Sidewalks and Bridges

If any person purposely destroys or injures any sidewalk, public bridge, culvert, or causeway or removes any of the timber or plank thereof or obstructs the same he or she will be guilty of a petty offense, will be fined not more than $100, and will be liable for all damages occasioned thereby and all necessary costs for rebuilding or repairing the same. 605 ILCS 5/9-122.

b. Capacity of Bridges or Culverts

Constructing any bridge or culvert upon any ravine, creek, drainage ditch or river upon a public highway in this State is unlawful unless the bridge or culvert has the capacity of sustaining highway traffic with

safety. Any person who violates the provisions of this Section will be guilty of a petty offense. The fact that any such bridge or culvert does not conform to the specifications of the Department in effect at the time when the contract for such bridge or culvert is let is prima facie evidence that the bridge or culvert does not have the capacity of sustaining highway traffic with safety. 605 ILCS 5/9-109.

c. Weed Control

The highway authorities must annually, at the proper season, to prevent the spread of noxious weeds as defined in "An Act concerning noxious weeds," destroy or cause to be destroyed all such noxious weeds growing upon public highways under their respective jurisdictions. The highway authorities must seasonably mow or manage all weeds and other vegetation growing along the highways under their respective jurisdictions. Any highway commissioner failing to comply with the provisions of this Section will be guilty of a petty offense and will be liable to a fine of not less than $10 nor more than $25 for each season in which he or she neglects such requirements. 605 ILCS 5/9-111.

d. Penalty for Depositing Weeds or Garbage in Highway

No person may deposit in a public highway or rest area weeds, trash, garbage, or other offensive matter or any broken bottles, glass, boards containing projecting nails, or any other thing likely to cause punctures in the tires of motor vehicles; and any person so offending will be guilty of a petty offense. However, this regulation does not apply to proper deposits of harmless materials made in good faith and in a proper manner to repair the roads or to the proper disposal of travel and picnic trash in the waste containers provided for such purpose at rest areas. 605 ILCS 5/9-121.

e. Willow Hedges

Where willow hedges or a line of willow trees have been planted along the margin of a highway so as to render tiling impracticable, the highway authority having jurisdiction of such highway may contract with the owner for their destruction, and they must be destroyed before tiling. The planting of such hedges or trees hereafter on the margin of highways is declared to be a public nuisance. 605 ILCS 5/9-108.

f. Hedge Fences

The owner of any hedge fence growing along the right-of-way line of any public highway must, during the year next after such hedge has

obtained the age of seven years and during each year thereafter, trim such hedge fence to a height not exceeding five feet, except for Osage hedge, which must be trimmed annually after the second year from the first trimming to a height not exceeding four feet, and the owner must trim all such hedges on the roadside so that foliage will not extend over the right-of-way line for a distance in excess of four feet. All such trimming so required must be done prior to October 1. The highway authority having jurisdiction over the highway, upon application of the owner of a farm, may permit such owner to grow a hedge fence to any desired height for a distance not to exceed one-fourth the total length of the hedge fence along the highway to serve as a windbreak for livestock. Such permit is revocable at any time. The provisions of this Section do not apply to any hedge protecting either an orchard or a building. Any failure or refusal to comply with the provisions of this Section is a petty offense and is punishable by a fine of not less than $10 nor more than $50 for each year of such failure or refusal. 605 ILCS 5/9-116.

g. Discharge of Sewage Into Open Ditches Along Street or Highway

No person, firm, corporation, or institution, public or private, can discharge or empty any type of sewage, including the effluent from septic tanks or other sewage treatment devices, or any other domestic, commercial or industrial waste, or any putrescible liquids, or cause the same to be discharged or emptied in any manner into open ditches along any public street or highway or into any drain or drainage structure installed solely for street or highway drainage purposes. Any person, firm, corporation, or institution, public, or private, in violation of this Section will be guilty of a petty offense and in addition shall be fined $25 per day for each day such violation exists. The highway authority having jurisdiction over the public street or highway affected by such violation must enter a complaint in the proper court against any violator of this Section. Upon the failure of any such highway authority to so act, any other person may in the name of the political division or municipality enter such complaint. 605 ILCS 5/9-123.

h. Obstructions at Grade Crossings – Signs or Signals

At all grade crossings of public highways with railroads outside the corporate limits of any municipality, the highway authority having jurisdiction of such highways must remove or cause to be removed from the highway all removable obstructions to view at such grade crossings, such as authorized signs and billboards, brush, and shrubbery, and must

trim or cause to be trimmed all hedges and trees upon the highway for a distance of not less than 300 feet from each side of such crossings.

No person can place or cause to be placed any sign or signal on a public highway within a distance of 300 feet of any grade crossing, except official traffic control devices authorized in an Act in relation to the regulation of traffic, and signs or signals required by law or the Illinois Commerce Commission for the protection of such crossings. Any person who violates any of the provisions of this Section will be fined not less than $10 nor more than $100 for each offense. 605 ILCS 5/9-112.

15. Vacated Highways

When any highway authority determines to vacate a highway or part of a highway under its jurisdiction established within a subdivision by a statutory plat, that authority may convey its interest in the vacated highway to any township road district that 1) has petitioned the highway authority for the vacation and 2) undertakes to develop the property as a bike path or alley for the use and benefit of the public. 605 ILCS 5/9-127(c).

Note: Road districts in which the roads owned or maintained by the district total 4 centerline miles or less in length must be abolished. The roads comprising the former district must be administered by the township board of trustees by contracting with the county, a municipality, or a private contractor. All taxing authority for this former road district is assumed by the township board. 605 ILCS 5/6-130.

XXVI. FENCE VIEWERS

The members of the township board act as the ex officio fence viewers. 765 ILCS 130/1, *et seq*. If any person neglects to repair or rebuild a division fence or portion thereof, any two fence viewers of the township may on complaint by the aggrieved party and after giving due notice to each party examine such fence. If they deem the fence to be insufficient, they shall notify the delinquent party and direct him/her to repair or rebuild the fence within a reasonable amount of time. 765 ILCS 130/6. If disputes arise between the owners of adjoining lands concerning the proportion of fence to be made or maintained by either of them, such dispute may also be settled by any two of the fence viewers. 765 ILCS 130/7.

When such matters are submitted to fence viewers, each party chooses one fence viewer. However, if a party fails, after eight days' notice in writing, to make such choice, the other party may select both. 765 ILCS 130/8. For all purposes of notice, it is sufficient to notify the tenant or person in possession of the adjoining premises if the owner is not a resident of the township in which the fences are situated. Fence viewers may question witnesses, and either of such fence viewers have power to issue subpoenas for and to administer oaths to such witnesses. 765 ILCS 130/18.

A. Lawful Fences

Fences that are four and one-half feet high and in good repair, consisting of rails, timber boards, stone, hedges, barb wire, woven wire (or whatever the fence viewers of the township or precinct where the same lie must consider equivalent thereto suitable and sufficient to prevent cattle, horses, sheep, hogs, and other stock from getting on the adjoining lands of another), shall be deemed legal and sufficient fences. 765 ILCS 130/2. The electors at an annual town meeting may determine what constitutes a legal fence in the township.

B. Resolving Disagreements between Fence Viewers

The two fence viewers must examine the premises and hear the allegations of the parties. In the event they disagree, they select another fence viewer to act with them. The decision of any two of them is final. 765 ILCS 130/9.

C. Decision

The decision of the fence viewers must be in writing and contain a description of the fence and of the proportion to be maintained by each. It must also specify their decision upon any other point in dispute between the parties. A copy of the decision should be given to the parties and filed in the office of the township clerk. 765 ILCS 130/10.

If, for any reason, the fence viewers fail to make a decision within 90 days after the matter has been submitted to them, either the county board or the town board may assume jurisdiction of the matter and make a decision. If neither the county board nor the town board makes a decision within 60 days after the expiration of the 90-day period, either party may petition the circuit court of the county in which the fence is located to make the decision. In such a case, the circuit court has original jurisdiction to hear and decide the matter. 765 ILCS 130/10.1.

D. Fees

Fence viewers are each entitled to $15 per day for the time spent viewing fences, which shall be paid by the party requiring the services. All expenses of the fence viewing are shared equally between the parties, except in case of view to appraise damages for neglect or refusal to make or maintain a just proportion of a division fence, in which case the costs of view is paid by the party in default and may be recovered as part of the damages assessed. 765 ILCS 130/19.

XXVII.CONSOLIDATION

Recently, the General Assembly has declared its intent to promote consolidation of redundant layers of government in an effort to promote government efficiency by reducing the overall number of local governmental units in Illinois.

A. ABOLITION OF ROAD DISTRICTS

The board of trustees of any township may submit a proposition to abolish the road district of that township to the electors at a general election or consolidated election. If the electors vote in favor of abolishing the road district, the district will be abolished either 90 days after vote certification by the governing election authority or on the date the term of the highway commissioner in officer at the time the proposition was approved by the electors expires, whichever is later. 605 ILCS 5/6-134.

On the abolition date all rights, powers, duties, assets, property, liabilities, obligations, and responsibilities of the road district will be assumed by the township and the township board assumes as well as all taxing authority of the road district. Additionally, the township board may enter into a contract with the county, a municipality, or even a private contractor to administer the roads under its jurisdiction.

In Lake County or McHenry County, all road districts with less than 15 centerline miles in length, as determined by the county engineer or county superintendent of highways, will be abolished. The affected road districts are abolished on the expiration of the term of office of the highway commissioner of the subject road district. 605 ILCS 5/6-140.

B. CONSOLIDATION OF MULTIPLE TOWNSHIPS

The township boards of any two or more adjacent townships may propose consolidation by referendum into either a new township or into an existing township. If both townships adopt resolutions to consolidate, each township board must certify the referendum question to the election authority to submit to the voters of each township at a general election. Each board must mail a copy of the adopted resolution to every registered voter in each township affected. 60 ILCS 1/22-5; 60 ILCS 1/22-10.

Until the referendum is approved, there can be no nominations or elections for any position in either of the townships. 60 ILCS 1/22-15(a). A transition township board is formed and composed of the members of the separate townships boards. The transition board only has the power to

propose and approve compensation of officials of the consolidated township and the propose and approve additional debt to be taken on by any of the separate townships. 60 ILCS 1/22-15(b). If the transition board does not agree to the amount of compensation for an official then the compensation will be equal to the lowest compensation for the same office between the separate townships in the preceding calendar year. The affected townships may not incur any additional debt without the approval of the transition township board.

Once the consolidated township is created, the separate townships cease and all rights, powers, duties, assets, and property of the separate townships are transferred to the consolidated township. 60 ILCS 1/22-20.

C. MERGER OF A SINGLE TOWNSHIP INTO TWO OTHER TOWNSHIPS

D. The township boards of any three adjacent townships may propose that a township that borders the other two townships be dissolved by referendum thereby transferring all rights, duties, and obligations to the two receiving townships. 60 ILCS 1/23-10. However, prior to passing a resolution on this type of merger, each of the affected township boards must hold a public hearing on the issue. 60 ILCS 1/23-10(b). Once the resolutions are adopted by all townships, the matter is submitted to the voters of all townships for the next general election with a copy of the resolution mailed to each voter. 60 ILCS 1/23-15.**DISCONTINUANCE OF TOWNSHIP WITHIN COTERMINOUS MUNICIPALITY**

The township board of the corporate authorities of a coterminous, or substantially coterminous, municipality may by resolution and referendum, discontinue and abolish the township.

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